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ABSTRACT

This report discusses how to safeguard affirmative action on college campuses. Section 1, "Threats to Affirmative Action," discusses Congressional action; state actions; and anti-affirmative action studies and reports. Section 2, "Affirmative Action Works," includes research findings; leaders' beliefs about affirmative action and diversity; a national perspective; and the business sector. Section 3, "Answering the Critics," presents The Case for Affirmative Action: a leadership conference on civil rights; and "Affirmative Action: Myth v. Reality" (the American Association of University Women). Section 4 "Legal Issues," presents "Affirmative Action in Education: A Current Legal Overview" (Jonathan R. Alger); major affirmative action cases: digest of the record; major civil rights and equal employment opportunity legislation since 1963; U.S. Department of Education 1966 memo on impact of Hopwood decision; and U.S. Department of Education 1995 memo on race-targeted student financial aid. Section 5, "What You Can Do," discusses college change of opinion; sample letters to Congress and to the editor; and joining the affirmative action in higher education network. Section 6, "ACE and Affirmative Action," describes the American Council on Education (ACE); ACE contacts; the history of the ACE and affirmative action; an ACE survey reinforcing the need to act; and ACE board statements on affirmative action and diversity. (SM)

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Making the Case for Affirmative Action in Higher Education

What You Can Do to Safeguard Affirmative Action on Campus and In Your Community

March 1999

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Threats to Affirmative Action

We are now in the midst of a significant debate over how best to fight discrimination. Affirmative action is one of the most effective means and best hopes for realizing the goal of equal opportunity for all Americans. As Senator Edward M. Kennedy (D-MA) recently testified, *"Civil rights is and has always been a bipartisan issue in Congress. The Party of Lincoln has produced many stalwart supporters of strong civil rights legislation: former Senators Everett Dirksen, Jacob Javits, Lowell Weicker, and Jack Danforth have led the way in the past, and many of our Republican colleagues carry on that distinguished tradition today."*

Congressional Action

Nonetheless, legislation was introduced in the 105th Congress to curtail affirmative action programs. Senator Mitch McConnell (R-KY) and Representative Charles Canady (R-FL) introduced the ***"Civil Rights Act of 1997,"*** which despite its name, prohibited consideration of gender, race, or ethnicity in federal employment, contracts, and other programs.

This proposal would have eliminated the consideration of race, ethnicity, or gender in all employment, contracting, and other programs at the federal level. Although the legislation purported to encourage the recruitment of qualified women and minorities, it specifically prohibited the use of any numerical objectives such as goals and timetables. It also would have eliminated the use of affirmative action to remedy past or present discrimination, forbidden consent decrees that utilize preferences, and outlawed even those programs that adhere to the "strict scrutiny" standard set by the Supreme Court.

Experts disagreed as to the impact on colleges and universities. Since virtually every college and university receives federal student financial aid and may receive other federal grants, some policy analysts argued that this could be broadly interpreted as a contract and, therefore, subject to the limits of the legislation. Others contended that, if narrowly focused, the impact of such a proposal would be minimal on higher education.

There were several hearings held on the measure, but most focused on employment and the awarding of federal contracts, and very little attention was given to the use of affirmative action in college admissions. The House Judiciary Subcommittee on the Constitution approved the bill along party lines. At the full Judiciary Committee level, a group of moderate Republicans moved to table the legislation, effectively killing it, at least for the duration of the 105th Congress. They stated that "this bill will not speed up the correction of the current injustices nor will it narrow the racial divide" and that "forcing this issue at this time could jeopardize the daily progress being made in ensuring equality."

It is expected that similar legislation will be introduced in the 106th Congress, which began in January 1999. If this occurs, we urge you to express your strong opposition to such measures to your senators and representatives. It is imperative that members of Congress hear from a broad constituency about the need to continue affirmative action programs. **(For further details and suggestions, see "What You Can Do" section of this document.)**

State Actions

California

Proposition 209

Much attention has been focused on California's Proposition 209, the misnamed "*California Civil Rights Initiative,*" which was approved by the state's voters in a close vote (54 - 46 percent) in November 1996. This initiative bans the consideration of race, ethnicity, or gender in public contracting, employment, and education. In November 1997, the U.S. Supreme Court rejected a challenge on Proposition 209, thereby permitting the lower court ruling banning affirmative action to stand.

There is a movement among students, faculty, and civil rights groups to get an initiative on the ballot in California in 2000 that would reverse the effects of Proposition 209. The initiative states: "*In order to act affirmatively in promoting equality of opportunity, it shall be lawful for the state to consider race, gender, and class as one of the criteria in the selection of qualified individuals for university admissions, public employment, and public contracting.*"

University of California Regents' Decision

In July 1995, the Board of Regents of the University of California (UC) voted to prohibit the use of affirmative action measures in hiring, contracting, and student admissions. This action took place shortly after Governor Pete Wilson severely curtailed affirmative action in a broad range of state procurement and administrative decisions.

In the process of making changes in its policies, however, the university must not violate any federal regulations that would jeopardize eligibility for federal or state funding. It may take appropriate action to remedy cases of discrimination, if approved by the Regents, or to satisfy a court order.

The employment and contracting resolution stated that "*Effective Jan. 1, 1996, the University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria in its employment and contracting practices.*" The president of the UC System was directed "*to ensure that all persons have equal access to job competitions, contracts, and other business and employment opportunities of the University.*"

The resolution affecting admissions practices went into effect for the 1997-98 academic year for graduate and professional students, and for undergraduate admissions in the fall of 1998. Admissions decisions must be made without any reference to race or gender for any program of study at the university, or *"admissions in exception to the UC eligibility requirements."* Not less than 50 percent nor more than 75 percent of any entering class on any of the UC campuses may be admitted strictly on the basis of academic qualifications. Under the new race-blind admissions process, more than 50 experts read nearly 30,000 files in search of students who demonstrated creativity, character, leadership, or artistic or musical talents.

In the fall of 1997, the University of California saw sharp declines in the number of students of color who applied, were accepted, and ultimately enrolled in its graduate and professional programs. Most noteworthy were the declines in UC law schools where enrollment of African Americans decreased by 63 percent, and Latinos by 34 percent. In the UC System's business schools, enrollment of Latino students dropped by 54 percent, while African American enrollment fell 26 percent. In the five medical schools, however, declines were not as severe because the admissions process is much more comprehensive than grades and test scores. Diversity in the university's graduate programs, such as education, remained little changed from the previous year.

Similarly, a 2 percent decline in minority undergraduate enrollment was experienced in the fall of 1998 at UC systemwide. At several of UC's most competitive campuses, including Berkeley, UCLA, and San Diego, the total number of African American and Latino students enrolled dropped by 48 percent and 32 percent, respectively, between 1997 and 1998. Other UC campuses, such as Riverside and Santa Cruz reported increases in underrepresented minorities admitted in 1998. The number of minority students who applied for admission to UC increased in 1998, reflecting the extensive outreach efforts to high schools with large minority populations. However, these outreach efforts did not yield the expected results in terms of actual enrollment of students of color systemwide.

In the second year of the new policy for graduate and professional students, minority enrollment at the UC Berkeley's law school increased by nearly 12 percent over fall 1997, but still fell short of the 1996 level. The increase was attributed to several factors:

- Aggressive recruiting at historically black colleges and universities and other minority-serving institutions, along with follow-up contacts by faculty and alumni;

- More emphasis on students' character and somewhat less on test scores during the admissions process;

- Creation of private scholarships for minorities; and

- Elimination of extra weight given to undergraduate degrees from elite colleges compared to less selective institutions.

California's current governor, Gray Davis (elected in 1998), has expressed dismay at the abysmal minority enrollment at UC, especially at the flagship campuses (Berkeley and UCLA) and the professional schools (law, medicine, and business). Governor Davis has indicated that action must be taken to reverse the downward spiral in the admission of qualified students of color at UC institutions.

In March 1999, the UC Board of Regents approved a proposal that would guarantee all students ranking in the top 4 percent of their high school graduating class a slot at one of the eight UC campuses. In order to qualify for admission under the new policy, students still must complete college-prep courses in English, math, and other subjects required by the university. Standardized test scores will only affect eligibility for the most competitive UC campuses (Berkeley, UCLA, and San Diego). The plan, which received mixed reviews, will go into effect in Fall 2001. No currently eligible students will be displaced. Projections show that nearly half of the newly eligible students will be from urban schools, and about one-fourth will be from rural schools. Latino enrollment is expected to grow from 12 to 20 percent, while enrollment for African Americans would increase from 3 to 5 percent.

Texas

The *Hopwood v. Texas* decision affects the three states in the Fifth Circuit: Texas, Louisiana, and Mississippi. However, the major impact has been on Texas, as Louisiana and Mississippi fall under prior desegregation cases, such as *Adams* and *Fordice*.

Hopwood v. Texas

In March 1996, the U.S. Court of Appeals for the Fifth Circuit barred the University of Texas (UT) Law School from considering race and ethnicity as factors in student admissions to promote diversity. The court ruled that the UT Austin Law School had violated the equal protection clause of the U.S. Constitution and had discriminated against four white applicants. The Fifth Circuit's decision reversed a 1994 U.S. District Court ruling that upheld the university's right to consider race as a factor in admissions. However, the 1994 ruling barred the use of separate admissions lists and different minimum test scores and grade point averages for students of color and white students. As a result of this earlier decision, admission practices at UT Law School were revised in accordance with the ruling.

In addition to affecting institutions within the Fifth Circuit, the ruling has broader implications for colleges and universities throughout the country. At the heart of the court's decision in *Hopwood* is a question of fundamental importance to all higher education institutions: Is the promotion of student diversity a compelling interest that justifies taking race into account to a limited extent in determining which applicants to admit? Two members of the three-judge panel that decided this case held that diversity is not a compelling interest by which race-conscious admissions practices can be justified. By so doing, they flatly rejected the views expressed by Justice Powell in the Supreme Court's 1978 *Bakke* decision. In deciding this case, the appeals court applied the "strict scrutiny" standard established by the Supreme Court in *City of Richmond v. Croson* (1989) and in *Adarand v. Peña* (1995).

The state of Texas appealed the ruling to the U.S. Supreme Court. However, the Court denied *certiorari* and allowed the lower court ruling to stand. A subsequent ruling on damages for the plaintiffs paved the way for a new appeal by the University of Texas, which is now pending. The American Council on Education, in cooperation with the Association of American Law Schools, the American Association of University Professors, and other higher education associations, will file an *amicus* brief in support of the University of Texas. The dates for filing and arguments have not yet been scheduled. **(For further details, see "Legal Issues" section of this document.)**

Whether or not the *Hopwood* decision in fact will be a crippling blow that curtails the use of affirmative action practices to facilitate greater diversity within higher education is yet to be decided. In the meantime, *Bakke* continues to be the controlling decision on which colleges and universities should base their institutional practices.

Ten Percent Law

Governor George W. Bush signed into law in May 1997 a measure that would require public universities to admit all Texas students who graduate in the top 10 percent of their high school class, regardless of test scores or extracurricular activities. This legislation was designed to reverse declines in minority applications to state universities. As a result of the *Hopwood* decision, which precluded the consideration of race as a factor in admissions, scholarships, and financial aid decisions, the number of applications plummeted by 24 percent for African Americans and 22 percent for Latinos.

The "*Ten Percent Law*" sought to increase the pool of potential applicants. However, concerns have been raised that, because of vast differences in the quality of elementary/secondary education between wealthy and poor districts, some students will not be sufficiently

prepared for the highly competitive campuses. While admissions officials have been broadening the factors considered in admissions decisions, this measure limits those factors. Another issue concerns the cost of implementation. It is estimated that $60 million in financial aid will be needed for the newly eligible minority students who qualify under the new law but can't afford to attend.

Enrollment data for the fall of 1998 showed encouraging results. Despite fewer enrollment offers to African American and Latino students, a greater number of those students who were offered admission actually enrolled at the University of Texas.

Proposition A

Patterned after California's Proposition 209, Proposition A, introduced in the City of Houston, sought to eliminate affirmative action in public employment and contracting. The requisite number of signatures was secured to place the measure on the November 1997 ballot. The support of the corporate sector and heavy voter turnout in African American and Latino communities were central to the defeat of Proposition A by a 55-45 percent margin.

In June 1998, a judge threw out the election results, stating that the language on the ballot did not reflect the intent of the more than 20,000 individuals who signed the petition to allow the measure to be included on the 1997 ballot. The words "affirmative action" and "women and minorities" were added to ensure that the public understood the issues. The judge asserted that the change in ballot language did not present the issue fairly. The City of Houston has indicated that it will appeal this ruling, in an effort to avoid another costly election battle.

Washington

Initiative 200 (I-200) was passed by voters in November 1998, despite opposition to the proposal by Governor Gary Locke (D), former Governor Daniel Evans (R), and many corporate executives, including Seattle-based Boeing, Microsoft, Eddie Bauer, Starbucks, Costco, Weyerhaeuser, and the Seattle Times. The initiative, similar to California's Proposition 209, was approved by 58 percent of the voters.

Unlike Proposition 209, however, I-200 was not an amendment to the state constitution. Therefore, it is uncertain whether the new law supersedes existing state and local laws that allow the use of race and gender in employment and contracting. Clearly, the initiative does not apply to state programs that are federally funded and, therefore, must comply with federal nondiscrimination laws. In addition, it does not eliminate preferences allowed for veterans, the disabled, or persons over 40 years old.

One of the most critical actions after the passage of I-200 was that University of Washington (UW) President Richard L. McCormick announced that the UW would suspend the use of race, ethnicity, and gender in admissions, beginning in Spring 1999 and for all applicants thereafter. Officials at the UW estimate a 15 percent decline in enrollment for African American and Latino students, both at the undergraduate and graduate and professional levels.

As a result of UW's new admissions policy, the number of black applicants to the UW law school for next fall plummeted 41 percent over last year, while the number of Filipino applicants dropped 26 percent and Latino applications are down 21 percent. It is too early to predict how many applicants will be accepted and how many will ultimately enroll, but it is clear that the overall minority representation in the law school will be sharply decreased.

The UW Board of Regents is considering a proposal that would allow race and gender to continue to be factors in the awarding of scholarships from private donors. Applicants would first have to pass a screening process based on merit, need, and other neutral factors. From that pool, students would be matched with scholarships, including those designated for women and minority students.

I-200 could also affect teacher recruitment and how students are assigned to public schools in the state (i.e., magnet school programs). In the past, race had sometimes been used as a "tiebreaker" in cases where there were more applicants than slots for a particular school, especially in communities where the public schools are highly selective.

Other States

Several other states have had anti-affirmative action legislation introduced and/or voter-based initiatives in progress. Two states had measures signed into law in 1997 (Alaska and Oregon). Many states had legislation introduced (but not enacted) in 1997 or 1998 (Alabama, Arizona, Colorado, Georgia, Kansas, Michigan, Missouri, Montana, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, and Tennessee.) Several states (Michigan, Missouri, South Carolina, and Tennessee) have anti-affirmative action bills pending in the 1999 legislative session.

Buoyed by success in California, 18 states have proposed voter-based initiatives in the past two years. Many have failed to get the required number of signatures in order to place their initiatives on the ballot. Several states may still do so in 1999 or 2000, including Colorado, Florida, Michigan, Nebraska, Ohio, and Oregon.

Pro-Affirmative Action Measures

Though limited in numbers compared to the anti-affirmative action movement, measures that would strengthen affirmative action programs have been introduced in the past two years in several states (Arkansas, Florida, Hawaii, Illinois, Minnesota, and New York). In Florida, for example, the legislation would require that all public universities have a concrete plan to increase the number of women and minorities in faculty and administrative positions. Five bills were introduced in Illinois related to employment, hiring, layoffs, compliance audits, and the availability of apprenticeships. Early in 1999, the legislatures in Colorado and New York are considering such measures.

Residents of the states that are attempting to strengthen and expand affirmative action are encouraged to thank their state legislators for these positive actions, and urge them to pass the legislation.

Anti-Affirmative Action Studies and Reports

The **Center for Equal Opportunity** (CEO), a conservative think tank, has undertaken studies of the state systems of higher education in several key states: California, Colorado, Michigan, North Carolina, Virginia, and Washington, as well as the U.S. Service Academies. These studies have found the use of preferences in admitting African American students with GPAs and SAT scores significantly below those of the white students admitted. For example, the study of North Carolina colleges showed 50-90 point differences in the SAT verbal scores and 70-110 point differences in the SAT math scores between African Americans and whites. The gaps between whites and Hispanics are much smaller. The CEO studies also claim that six-year graduation rates are significantly lower for African Americans and Hispanics than for whites and Asians.

The **Center for Individual Rights** (CIR), a Washington-based public policy law firm, represents the plaintiffs in the major reverse discrimination lawsuits filed against the flagship universities in Michigan, Texas, and Washington. In late January 1999, the CIR released two handbooks, one intended for college and university trustees and the other for students. The handbook for trustees claims to provide "practical knowledge about what is legally permissible in college and university admissions" and threatens that trustees may be held "personally liable" for damages if a lawsuit against the institution is successful. The companion volume offers advice to students who seek to sue their institutions.

The CIR contends that most colleges that practice affirmative action do so in a way that is illegal under federal law. An advertisement prepared for student newspapers at 15 institutions charged that "nearly every elite college in America violates the law." In order to counter the CIR attacks,

68 higher education associations joined to endorse a statement highlighting the reasons that diversity is essential to a quality education. This statement was placed as an advertisement in the Chronicle of Higher Education and the various student newspapers targeted by CIR. **(See Statement on pages 34-36 of this document.)**

In response to the CIR charges, leaders of the University of Virginia appointed a special panel to review the role that an applicant's race plays in admissions, and to determine whether governing-board members may be held personally liable for policies that may violate the law. Several of Virginia's more selective public institutions were among those targeted by the CIR.

Similarly, the University of Massachusetts announced recently that it would rely less on race and ethnicity and more on factors such as socio-economic status and extracurricular activities when admitting students and awarding financial aid. College officials estimate that this change will cause minority enrollment to drop from 19 percent to 13 percent next year.

The **Lincoln Center for Public Service** and the **Florida Association of Scholars** compiled a report on "*Race as an Admissions Factor in Florida's Public Law and Medical Schools.*" The study examined admissions practices over a three academic-year period, 1995-1997. In the Executive Summary, the authors declared that "*race is a very significant factor in determining acceptance or rejection. At every level of merit qualification, black applicants have a much better chance of acceptance at Florida's law and medical schools than either white or Hispanic students with similar qualifications.*" They further stated that the grades and test scores of black applicants admitted were significantly lower than those of either white or Hispanic students who were accepted to the law and medical schools. While these assertions may be true in this case, other studies have shown that many white students with lower grades and test scores are admitted to selective institutions if they possess certain qualities that are of importance to the admissions committee. Some of these characteristics include community service, leadership skills, and the ability to overcome obstacles. This is especially true in considering candidates for admission to medical school, where many factors are taken into account in addition to grades and MCAT scores.

The **Delaware Association of Scholars** conducted a survey of faculty at the University of Delaware in December 1998. The authors reported that about 70 percent of those who responded oppose the use of racial and gender preferences in both faculty employment and student admissions. However, it must be noted that the response rate for the survey was only about 20 percent, causing concern about the validity of the results.

Affirmative Action Works

- **What the Research Shows**

  Higher Education Trends Reveal Progress — But the Need Remains

- **What Diversity and Affirmative Action Research Shows**

  Benefits to Students
  Benefits to Society and to the Economy

- **What Leaders are Saying about Affirmative Action and Diversity**

  College Presidents
  Higher Education Associations
  Governors

- **National Perspective**

  President Clinton's July 1995 Speech
  White House Initiative on Race
  Office of Federal Contract Compliance Programs Data

- **Business Sector**

  Survey of Chief Executive Officers
  Glass Ceiling Commission

What the Research Shows

Higher Education Trends Reveal Progress—But the Need Remains

Efforts to increase the participation of underrepresented groups in higher education and to diversify college and university student bodies and faculties have been under way for more than 25 years. An analysis of enrollment, degree awards, and employment trends during this period reveals two things: first, much has been achieved, and second, persons of color are far from reaching parity in higher education.

During the past two decades, white women and persons of color have experienced enrollment gains, increased undergraduate and graduate degree attainment, and made gains in faculty and administrative employment. However, until recently, African American and American Indian progress has been sporadic. Only during the past ten years has steady progress been made among all four ethnic minority groups. Yet there is evidence that these gains are evaporating in states where affirmative action has been rolled back.

The following data are drawn from ACE's ***1997-98 Status Report on Minorities in Higher Education***.

College Participation

- College participation rates among all high school graduates ages 18 to 24 climbed to an all-time high of 43.5 percent in 1996.
- Overall the college-going rates for men and women ages 18 to 24 in 1996 were nearly the same—43 percent for men and 44 percent for women. However, these rates differ by race and ethnicity, with African American and Hispanic women being more likely to enroll in college than their male counterparts. Comparable data for American Indians and Asian Americans are not available.
- An upward swing occurred in college participation for African Americans and Hispanics during the late 1980s and mid-1990s. Nonetheless, these groups continue to be less likely to attend college than whites. In 1996, 44 percent of white high school graduates ages 18 to 24 were enrolled in college, compared with 35.9 percent of blacks and 35 percent of Hispanics.

College Enrollment

- Despite continued gaps in the college-going rates of students of color and white students, in 1996 and prior to the impact of affirmative action rollbacks in several states, the actual number of African American, Hispanic, Asian American, and American Indian students enrolled in college increased by 2.7 percent to an all-time high of nearly 3.6 million.

- While the percentage of students of color attending institutions of higher education has increased, the gains differed by race and ethnicity. Between 1991 and 1996, Hispanic students led the enrollment increases posting a 3.3 percent gain. Other ethnic minority students also experienced increases: Asian Americans at 29.3 percent, American Indians at 17.3 percent, and African Americans at 12.3 percent during the same time period.

- The largest enrollment gain for students of color in 1996 was made at the graduate level with a 5.7 percent increase. Additionally, students of color at the professional and undergraduate levels increased by 2.9 and 3.0 percent respectively.

College Completion Rates

American Indian, African American, and Hispanic students have documented important gains in completing college during the late 1980s and mid-1990s. However, they continue to be less likely to complete college than Asian American and white students. When compared with prior years, the most recent six-year college completion data (i.e., data on the rate of completion six years after first enrolling in college) show a slight increase in the completion rates among these groups. This good news may reflect the increased emphasis that some institutions are placing on student retention.

- NCAA college completion data from Division I institutions show that African Americans, Asian Americans, American Indians, and Hispanics achieved progress in completing college from 1990 to 1995. However, 1995-1996 data show a slight dip in the college completion rates of African Americans, which is down by 2 percent, and by 1 percent for Hispanic and Asian Americans, while American Indians remained unchanged.

- Asian Americans were the only minority ethnic group that had a higher college graduation rate than white students. African Americans, American Indians, and Hispanics trailed these two groups significantly. In 1996, the gap in graduation rates between American Indians and whites was 22 percentage points. The gaps between whites and African Americans and Hispanics were 21 and 14 percentage points, respectively.

Degrees Conferred

Despite the fact that African Americans, Hispanics, and American Indians completed college at substantially lower rates than whites and Asian Americans, overall, during the late 1980s and mid-1990s, students of color progressed in the actual number of undergraduate and graduate degrees they received. This is particularly significant for African

Americans, who had lost ground in the number of degrees awarded during the early to mid-1980s.

- Between 1990 and 1995, bachelor degree awards were up 51.6 percent for minority students. Bachelor degree awards to African Americans were up 42.8 percent, 65 percent for Hispanics, nearly 50.4 percent for American Indians, and 54.1 percent for Asian Americans.

- Nonetheless, in 1995 only 5.2 percent of all bachelor degrees were awarded to Asian Americans, 4.7 percent to Hispanics, and approximately 0.6 percent to American Indians, while 7.5 percent were awarded to African Americans.

- In 1996, 14 percent of all doctorates awarded to U.S. citizens went to minorities compared with 9 percent in 1985. Although this growth marks clear progress, persons of color remain underrepresented at the doctoral level.

Faculty Employment

- The number of full-time faculty members of color increased by 47.7 percent from 1985 to 1995, compared with a gain of 9.9 percent among whites. However, the growth varied considerably among different ethnic minority groups, and faculty of color represented only 12.9 percent of all full-time faculty in 1995.

- In 1995, women held 43.4 percent of all full-time faculty positions compared with 27.6 percent in 1985. But they are much less likely to hold full professor positions than are their male counterparts.

- Despite the continued underrepresentation of minorities in many sectors, affirmative action has had dramatic and measurable results in moving minorities and women into meaningful employment and participation in higher education as students, faculty, and administrators. Individual affirmative action and diversity programs have been implemented at myriad campuses and have proven to be successful.

What Diversity and Affirmative Action Research Shows

Benefits to Students

How do students benefit from a strong institutional emphasis on diversity and multiculturalism? This question was examined by noted educational authority Alexander Astin in a national four-year longitudinal study of student outcomes that surveyed 25,000 undergraduates at 217 four-year colleges and universities. The findings of this study empirically support the premise that students of all racial

and ethnic backgrounds benefit from institutional diversity efforts and from multicultural curricula and/or experiences (Astin 1993a). Based on this study, Astin concludes that *"emphasizing diversity either as a matter of institutional policy or in faculty research and teaching, as well as providing students with curricular and extra-curricular opportunities to confront racial and multicultural issues, are all associated with widespread beneficial effects on a student's cognitive and affective development"* (Astin 1993b).

The University of Michigan released a publication entitled "***The Compelling Need for Diversity in Higher Education***," containing expert reports that were submitted as evidence in two pending lawsuits against the University: *Gratz, et al. v. Bollinger, et al.* and *Grutter, et al. v. Bollinger, et al.* One of these reports, by Patricia Gurin, Professor of Psychology and Women's Studies at the University of Michigan, presents comprehensive and compelling research which shows that "*a racially and ethnically diverse university student body has far ranging and significant benefits for all students, non-minorities and minorities alike.*" Based on findings from three parallel empirical analyses of university students, as well as from existing social science theory and research, Gurin concludes that "*students learn better in a diverse educational environment, and they are better prepared to become active participants in our pluralistic, democratic society once they leave such a setting.*" The report can be found on the University of Michigan website at: http://www.umich.edu/~newsinfo/Admission/Expert/toc.html.

Diversity Works: The Emerging Picture of How Students Benefit, by Daryl G. Smith, et. al., and published by the Association of American Colleges and Universities (AAC&U) in 1997, provides the most current review of research reports that describe our understanding of the importance and value of student diversity. "*While many studies reviewed for this report evaluate the practices employed by individual institutions and their programs, others use national databases and multi-institutional studies to provide an empirical foundation for the development of individual initiatives*" (AAC&U's Diversity website). Some of the conclusions of this meta-analysis of diversity research include the following:

- Diversity initiatives positively affect both minority and majority students on campus. Significantly, diversity initiatives have an impact not only on student attitudes and feelings toward intergroup relations on campus, but also on institutional satisfaction, involvement, and academic growth.

- Growing evidence shows that involvement in specialized student groups, such as ethnic residential theme houses, support centers, and academic departments, benefits students of color and others. Indeed, these activities appear to contribute to increased satisfaction and retention, despite prodigious commentary of their negative effect on the development of community on campus.

- Contrary to widespread reports of self-segregation among students of color on campuses, the research finds this pattern more typical of white students. Students of color interact more with dominant students than the reverse.

- The evidence continues to grow that serious engagement of issues of diversity in the curriculum and the classroom has a positive impact on attitudes toward racial issue, on opportunities to interact in deeper ways with those who are different, on cognitive development, and on overall satisfaction and involvement with the institution. These benefits are particularly powerful for white students who have had less opportunity for such engagement.

- While the reports of successful diversity initiatives are encouraging, more cross-institutional studies are needed. Moreover, the deeper studies which are emerging from individual campuses will continue to expand what we know about effective strategies, about the differential impact of certain strategies for different student groups, and about the apparent relationship between addressing the needs of underrepresented students through particular programs and initiatives, while at the same time addressing institutional issues through broad-based strategies (*Diversity Works*, Executive Summary, pp. v-vii).

An earlier report, also produced by AAC&U, ***The Impact of Diversity on Students: A Preliminary Review of the Research Literature***, by Morgan Appel, David Cartwright, Daryl G. Smith, and Lisa E. Wolf, published in June 1996, is also an excellent reference. This publication provides an overview of research on the impact of institutional diversity policies and practices on student learning and campus life. The report offers an extensive annotated bibliography on the value of diversity on student outcomes in higher education. For more information about these reports contact AAC&U, *http://www.aacu-edu.org/*.

The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions is a longitudinal study by William Bowen and Derek Bok, in which they studied the 1976 and

1989 cohorts of students at selective colleges and universities. Bowen and Bok found that most African Americans who were admitted to these institutions under affirmative action policies succeeded in college, established successful careers, and assumed major leadership roles in their communities. Survey data further revealed:

- a strong and growing belief among graduates in the value of enrolling a diverse student body;
- 79% of white graduates believe that race-sensitive admissions policies at their alma mater should either be maintained or strengthened;
- similar levels of support for diversity between white matriculants who had been turned down by their first-choice school (and who might therefore be expected to resent race-sensitive admissions policies) and those who had been admitted;
- a significant degree of social interaction between the races during college; and
- the belief among graduates that college had contributed much to their ability to work well and get along with members of other races.

Benefits to Society and to the Economy

In addition to demonstrating student benefits of diversity, Bowen and Bok's ***The Shape of the River*** also establishes societal benefits of admitting diverse students to college.

- 56% of blacks who graduated from the institutions studied went on to earn advanced degrees, including law, medicine, and business. This benefits society overall, as well as the emerging black and Latino middle class.
- Black men and women graduates of selective colleges are more active than white graduates in political and civic activities, including community service work.

A study published in the ***Journal of the American Medical Association*** in October 1997 found that students admitted to the University of California, Davis, Medical School under affirmative action policies between 1968 and 1987 have fared just as well as other graduates despite entering the program with lower grades and test scores. Researchers concluded that "*An admissions process that allows for ethnicity and other special characteristics to be used heavily in admission decisions yields powerful effects on the diversity of the student population and shows no evidence of diluting the quality of the graduates.*"

Robert C. Davidson, one of the study's authors, asserted that the findings prove that UC's former affirmative action policies worked, and that "*professional schools need to be given this flexibility to select the best candidates to produce not only a stellar class, but a diverse class, because that is important to the future of health professions in California*" (The Sacramento Bee, October 8, 1997).

Data from the ***Association of American Medical Colleges' 1996 Graduating Student Questionnaire*** point to the societal benefits of training underrepresented minority students to become doctors.

- Underrepresented students were four times more likely than other graduates to indicate that they intended to practice medicine in "socio-economically deprived" areas.

- More than half of the underrepresented minority graduates who planned a career in a generalist specialty indicated a willingness to practice in underserved areas.

- In addition, a substantial proportion of underrepresented minority graduates who planned a career in a non-generalist field also planned to work in underserved areas.

An obvious strategy to improve health care service to minorities, therefore, is increased recruitment, admission, and graduation of underrepresented minorities to medical school.

At ACE's ***Symposium and Working Research Meeting on Diversity and Affirmative Action*** in January 1999, Anthony P. Carnevale, Vice President for Public Leadership at the Educational Testing Service, presented a paper that made a strong case for diversity as one of the engines driving the U.S. economy. Carnevale highlighted research that shows: "*Diverse work groups and customers are not only inevitable, they also are more efficient, flexible, and creative at a time when the intensity and complexity of organizational life and economic competition reward these behaviors the most.*" Carnevale's research demonstrates the economic benefits of having diversity on college campuses.

- If African American and Latino workers were represented at colleges and universities in the same proportions as their share of 18- to 24-year olds, U.S. wealth would increase by $231 billion every year, add $80 billion in annual tax revenues, and decrease the proportions of minority families with inadequate incomes.

- If the African American and Latino "*communities had the same distribution of college education as the non-Hispanic white community...it would help ensure an adequate supply of skilled workers*" that is currently absent in the workforce.

If the benefits of a diverse workforce are to be realized, we will need to prepare diverse students on our college campuses.

Containing a theme similar to Carnevale's, Glenda Burkhart's article on ***The Shape of the River,*** in the January-February issue of ***The Harvard Business Review***, suggests that many U.S. corporations now regard diversity as a competitive advantage. Furthering that argument are sections in ***Forbes*** magazine (April 20, June 1, September 7, and November 16, 1998) containing testimony from more than 40 Fortune 500 companies that diversity is an important contributor to profitability.

References

Appel, M., D. Cartwright, D. G. Smith, and L. E. Wolf (1996). *The Impact of Diversity on Students: A Preliminary Review of the Research Literature*. Washington, DC: Association of American Colleges and Universities.

Astin, A. W. (1993a). *What Matters in College? Four Critical Years Revisited*. San Francisco: Jossey Bass.

Astin, A. W. (1993b). "Diversity and Multiculturalism: How are Students Affected?" *Change*. 25, 2: 44–49.

Bowen, W. G., and D. Bok. (1998). *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*. Princeton, NJ: Princeton University Press.

Carnevale, A. P. (1999). *Campus Diversity and the New Economy*. Paper presented at the American Council on Education's Symposium and Working Research Meeting, Arlington, VA.

Smith, D. G. (1997). *Diversity Works: The Emerging Picture of How Students Benefit*. Washington, DC: Association of American Colleges and Universities.

University of Michigan (1999). *The Compelling Need for Diversity in Higher Education*. Ann Arbor, MI: University of Michigan.

Wilds, D. J., and R. Wilson (1997-98). *Sixteenth Annual Status Report on Minorities in Higher Education*. Washington, DC: American Council on Education.

What Leaders are Saying about Affirmative Action and Diversity

College Presidents

Affirmative action works, and most Americans, when questioned carefully, support the principles, as long as quotas are not included.

The ***Journal of Blacks in Higher Education*** surveyed the presidents of the nation's 25 highest-ranked universities and the 25 highest-ranked liberal arts colleges. The presidents were asked with which of the following three statements they most agreed:

> (1) All credentials being equal, I am in favor of giving the admissions nod to an applicant from a disadvantaged racial group.
>
> (2) Because there is a very large gap between the mean academic credentials of blacks and whites, I am in favor of admitting significant numbers of less academically qualified blacks, provided they can meet our academic standards.
>
> (3) I am opposed to any form of preferential admissions based on race.

Forty-four percent of the respondents selected the first statement, while 13 percent chose the second statement, and none identified with the third statement. These results illustrate the extent of support for affirmative action among college presidents. Following are the cogent statements of two of those surveyed:

> Nannerl O. Keohane, president of Duke University, responded, *"We understand that African Americans have been discriminated against in the past and want to make sure that in the case of students, as with faculty and staff, members of this community have opportunities to work and study at Duke University in numbers more commensurate with their representation in the appropriate populations from which we draw qualified students, faculty, and staff."*
>
> Harry C. Payne, president of Williams College replied, *"From the extraordinarily rich pool of applicants with which Williams is blessed, we certainly do admit more students of color than would be the case if we slavishly used standardized testing as the sole measurement. But they are among the very brightest students in the country, show tremendous potential, and contribute significantly to the education that Williams is able to offer to all its students."*

The Board of Trustees of Tufts University developed a "vision" to guide the institution into the next century. The issue of diversity was identified as one of paramount importance to Tufts' future. John DiBiaggio, president of Tufts and ACE Board Chair, wrote, "*I heartily concur that diversity is important to Tufts, and indeed to the nation, for three fundamental reasons. First, encouraging and fostering, within our community, a blending of ethnicities, cultures, races, religions, and genders is educationally sound. It is our obligation to prepare our students to live and work in a highly diverse society.*" We must attract a diverse student body and "*strive for an equally diverse faculty...*"

"*Second, diversity should be realized at Tufts and elsewhere for moral reasons.*" We have a responsibility to "*address the vestiges of past racial injustices and to confront those that persist today. We have a moral obligation to see that we provide opportunities for everyone, not just for some...Finally, the practical implications [of diversity] speak for themselves...To deny quality educational opportunities to the fastest growing segment of our population simply does not make good business sense...We simply will not be able to compete as a nation if the majority of our population has not been properly prepared.*"

DiBiaggio continued, "*Given the reality of our future demographics, why is it that so many concerns are currently being raised in Washington and elsewhere about the relevance of diversity, and particularly, affirmative action guidelines? I believe that there is a genuine misunderstanding of what is meant by affirmative action. In essence, affirmative action has taken us beyond the passivity of "equal opportunity" and engaged us in the active and creative seeking or qualified, underrepresented candidates.*"

Neil L. Rudenstine, president of Harvard University, in an article in the ***Harvard University Gazette***, wrote, "*Especially at a time when long-standing national policies are being discussed and debated, it is important that we reaffirm Harvard's strong commitment to openness and inclusiveness throughout our community of faculty, students, and staff. All of us benefit, both individually and collectively, from the opportunity to live and work in an environment that brings together people from a wide variety of backgrounds. Our inclusiveness is one of the main sources of our vitality as an academic and human community. We intend to continue reaching out to identify and attract outstanding individuals from historically underrepresented groups in our effort to enhance equal opportunity and excellence throughout the University.*"

In his 1992 commencement address, Rudenstine stated, *"the goals of diversity and quality are deeply interrelated, and need to be addressed together."* He participated in the 1993 celebration honoring Martin Luther King, Jr., and remarked, *"We are, in this country, engaged in a national experiment in pluralism, openness, and equality of opportunity that no other society has ever genuinely attempted—much less carried to a successful end. At a time like the present, ...it is all the more important that we should strongly reaffirm our guiding principles."*

Walter Massey, president of Morehouse College, gave the opening address at ACE's 1999 annual meeting. He used this forum as an opportunity to speak to the issue of affirmative action. *"There certainly is no more difficult challenge before us today than the issue of race and affirmative action in higher education....There is an opportunity to make the case that affirmative action is still needed and to convince the majority of the public that it is not detrimental to them or to society at large to continue such programs. However, in order to make this case, we will have to marshal evidence of the type developed by Bowen and Bok* **[See pages 16-17 of this document]***—and ensure that the programs that are in place do, in fact, achieve their ends."*

Lee C. Bollinger, president of the University of Michigan, in his response to the lawsuit regarding admissions, stated, *"Since its founding, the University of Michigan has been committed to providing an education to the widest range of students. Throughout our history, we have included students from diverse geographical, racial, ethnic, and socioeconomic backgrounds. For almost 200 years, public universities have unlocked the doors to social and economic opportunity to students from many different backgrounds, and we believe it is absolutely essential that they continue to do so. Our mission and core expertise is to create the best educational environment we can. We do this in part through a diverse faculty and student body. Our admissions policies are linked to these core values, especially our chief value: academic excellence."*

In a subsequent statement, Bollinger reiterated, *"The challenge to affirmative action in higher education is a challenge to our philosophy of education and to the historical purposes of our great public universities. Implicit in its claim is a presumption that we admit some students who are not qualified. Let us be clear: All students admitted to the University of Michigan meet threshold requirements establishing that they are fully qualified to do the work of a demanding undergraduate program....The country cannot afford to deprive institutions of higher education of the ability to educate generations of young Americans—*

minority and nonminority—in an environment that enables all to flourish, and understand each other, in a truly integrated society."

Mary Sue Coleman, president of The University of Iowa, in a recent speech, stated, "*I know why affirmative action is so important. I think of the richer diversity and inclusiveness that has made The University of Iowa and so many other great American universities far stronger and more vibrant than they were when I was a graduate student—and I know what affirmative action has accomplished, and can continue to accomplish in the future.*"

Coleman continued, "*Affirmative action, as practiced in contemporary research universities, is not the rigged system that our worst critics believe it is. It simply means that institutions take positive action to diversify the pools of applicants who compete for university positions, and to ensure that applicants of different backgrounds are included in interview processes. Then the best applicant is hired...In terms of student admissions, affirmative action means that universities make positive efforts to welcome students of diverse backgrounds and make resources available so that, for students of all socio-economic strata, a university education is within reach. Were we to do less, the quality of education offered to all students would be compromised.*"

Harold T. Shapiro, president of Princeton University, wrote in an essay about affirmative action, "*The achievement of social justice in an increasingly diverse polity such as ours clearly depends on our capacity to extend empathy and mutual respect—as well as toleration—across lines of color, gender, religion, and ethnic background. And since our society cannot be strong or just if many are without hope or a perceived stake in our future, I believe it is imperative that we aim to create a pervasive sense of inclusion and a rising sense of hope and possibility for all citizens. I not only believe we can achieve these objectives within the democratic institutions we have established, but that they are the best vehicles for this purpose, since they allow us to see our prospects as interwoven and dependent on each other.*"

Charles M. Vest, president of the Massachusetts Institute of Technology, recently reiterated MIT's commitment "*to acting affirmatively in pursuit of our vision of an academic community of the highest level of excellence, whose members reflect the changing face of our nation....This requires, first, that we work to create at MIT an atmosphere of civility, collegiality, and mutual respect—one that stimulates and supports all of our faculty, students, and staff. Second, we must take renewed affirmative action to ensure equality of opportunity in education and employment at the Institute. Specifically,*

thoughtful and effective recruitment and career development of minorities for positions at all levels is necessary to ensure their greater and more effective participation in MIT's workforce."

Franklyn G. Jenifer, president of the University of Texas at Dallas, issued the following statement recently: *"While important progress has been made, the goal of affirmative action—that of ensuring equal opportunities for all Americans—has not been achieved. Unfortunately, to some, affirmative action has come to simply mean quotas or preferential treatment based on race, ethnicity, or gender, while in fact it has been an increasingly essential part of good personnel policy.*

"In an ever-contracting world, where people of all races and genders are participating as a global community, a diverse, highly qualified workforce in both the public and private sectors will be a tremendous asset for our country in an ever more competitive economy. Of all the agencies in our society that share a responsibility of ensuring that our workforce reflects the diversity of the population, education in general—and higher education in particular—is that one among many which can provide young Americans of all backgrounds the skills and training essential for those middle- and upper-income career opportunities."

Gerhard Casper, president of Stanford University, laid out his thoughts on affirmative action: *"Affirmative action does not require, and does not mean, quotas or preferment of unqualified over qualified individuals. Indeed, such preferment may violate anti-discrimination laws. Affirmative action is based on the judgment that a policy of true equal opportunity needs to create opportunities for members of historically underrepresented groups to be drawn into various walks of life from which they might otherwise be shut out. Barriers continue to exist in society, and therefore affirmative action asks us to cast our net more widely to broaden the competition and to engage in more active efforts for locating and recruiting applicants."*

When Stanford was founded, no tuition was charged, so that the university would not become elitist and all highly qualified students would have the opportunity to succeed. Casper observed that this *"spirit of equality must accordingly be maintained within the University."* Today, entrance requirements for Stanford are very stringent and every admitted student is considered deserving and exceptional. A few categories of applicants—certain ethnic minorities, legacies, and athletes—receive special consideration provided they meet these requirements. The admissions review aims to achieve diversity.

Casper believes this is important for two reasons: *"First, we want a rich*

educational environment to challenge our students. Students learn much from one another. Second, we want to be faithful to our task to educate leaders for a diverse and complex society—a society that will, we hope, overcome the undue tendencies toward stratification. This cannot be done unless the country's demographic diversity finds a presence on campus....A university needs to be integrated in order to pursue its tasks. Even with affirmative action, students are evaluated and admitted to Stanford as individuals, not in groups. No university can thrive unless each member is accepted without regard to labels and stereotypes."

Higher Education Associations and Organizations

ACE and 68 higher education associations worked together to craft a statement reaffirming their commitment to diversity in higher education, and the use of race as one factor among many to be used in the admissions process. This statement highlighted the reasons that diversity is essential to a quality education. **(See Statement on pages 33-35.)**

After the Supreme Court denied *certiorari* in the *Hopwood* case, ACE and 32 higher education associations sent a letter to all college and university presidents advising institutions in states outside the jurisdiction of the Fifth Circuit that *Bakke* remained good law. The letter also cautioned campuses that, "*to be lawful, affirmative action programs generally must withstand "strict scrutiny' by the courts.*" **(See text on pages 36-37.)**

Throughout the summer of 1995, ACE worked with a broad coalition of higher education organizations to review the *Adarand v. Peña* and *Podberesky v. Kirwan* court decisions to determine their possible effects on higher education. Committed to affirmative action, this coalition of 23 organizations considered unwarranted the additional threat of congressional attacks, and opposed the precipitous decision by the University of California Board of Regents to change its policies on affirmative action in admissions, hiring, and contracting. The coalition sent a letter in support of affirmative action to its constituents to provide them with accurate information as they started a new academic year. **(See pages 38-40 for text of letter.)**

AAU Statement

In April 1997, the 62 member presidents of the Association of American Universities (AAU) issued a statement in the *New York Times* endorsing the continued use of race as a factor in admissions decisions. The statement, ***On the Importance of Diversity in University Admissions***, explicitly asserted the presidents' belief that student diversity is essential to a quality higher education and stated their support for the use of affirmative action as a tool to achieve that goal. They expressed their *"strong conviction concerning the continuing need to take into account a wide range of considerations—including ethnicity, race, and gender—as*

we evaluate the students whom we select for admission."

The statement declared that the "*concept of merit must take fully into account not only academic grades and standardized test scores, but also the many unquantifiable human qualities and capacities of individuals, including their promise for continuing future development.*" Some of these qualities include artistic or musical talents, athletic ability, strength of character, leadership qualities, extracurricular activities, community service, and geographic diversity, in addition to race, ethnicity, and gender.

In today's multicultural workplace, colleges and universities have a responsibility to prepare their students to be productive members of society. *"As presidents and chancellors of universities that have historically produced many of America's leaders in business, government, the professions, and the arts, we are conscious of our obligation to educate exceptional people who will serve all of the nation's different communities."*

The richness of the dialogue—both in and out of the classroom—is enhanced when students from diverse backgrounds share their views and experiences. Students learn to work together, to exercise leadership, and to build consensus. The institution benefits and all students benefit from a diverse student body and faculty, as does our nation as a whole.

AASCU Statement

Also in April 1997, the American Association of State Colleges and Universities (AASCU) issued a ***Statement on Access, Inclusion, and Equity***, in which they stated their commitment "*to achieving a quality-based public higher education delivery system*" with the goals of access, inclusion, and equity. In order to achieve these goals, several policy recommendations were given for public higher education. Each institution must:

- Reaffirm and reinforce its access mission even in the face of diminishing resources;
- Search for ways to encourage and include individuals from historically underrepresented groups;
- Serve as a model for the pluralistic and democratic society of the future by fostering a climate of inclusion, free from bias and discrimination; and
- Expand understanding of equity to eliminate any vestiges of bias in admissions, advancement, and hiring.

Over the past 50 years enrollment in higher education has grown to more than 14 million students, including increasing numbers of women and minorities. However, African American, Hispanic, and Native American students still trail white students on educational participation and completion indicators. To insure that no capable student is denied access to America's institutions, college and university presidents should:

- Educate the public America's future population growth and demographic transformation;
- Press for adequate resources to meet emerging needs, and effectively manage and prioritize those resources;
- Advocate low-tuition, high-aid formulas in order to reverse the grant-loan imbalance; and
- Seek alliances with business and industry to safeguard the quality of our human capital.

Socializing with people from different racial or ethnic groups demonstrably promotes a student's commitment to fostering racial understanding. Businesses recognize the value of creating a multicultural workforce to boost productivity and increase revenues. Colleges and universities produce this skilled and diversified workforce. To insure that higher education is inclusive, college and university presidents should:

- Promote racial understanding and gender equity on campus;
- Create a campus environment conducive to racial and gender inclusiveness;
- Target resources and attention to programs that increase retention and graduation rates;
- Reject efforts to set lower standards for minority students and insist that all students receive a rigorous, high-quality education that prepare them for a technically complex and demanding future;
- Support effective admissions and recruiting policies that encourage minority enrollment; and
- Encourage academic advising and career centers to guide minorities and women into professional fields and graduate work.

Forty years ago, legal segregation in higher education existed in many states. Elsewhere, minority students were underrepresented and there were few women and persons of color among faculty. Even though progress has been made to overcome these inequities, public colleges and universities must insure that all citizens receive fair and equitable treatment. To accomplish this, presidents should:

- Continue to recognize that access, inclusion, and equity are the goals of the public university and need to be included in their mission statements;
- Serve to moderate and elevate the debate concerning equity in society;
- Work actively to promote equity in admissions; and
- Make special efforts to attract faculty and staff who will enrich the overall diversity of the campus.

The goals of access, inclusion, and equity assume the common right of capable students to enter college, receive a quality education, and earn a degree representing rigorous standards of achievement. Website: *http://www.aascu.nche.edu/news/memo/issues/97memo/memoapr.htm.*

AACC Statement

The American Association of Community Colleges (AACC) adopted a ***Statement on Inclusion***, reaffirming its commitment to diversity as a crucial element to a democratic society. The policy statement, issued in April 1997, strongly endorsed the continued use of admissions guidelines and employment practices that promote broad diversity in community colleges.

This statement followed more than 20 years of policies and resolutions by AACC's Board of Directors supporting affirmative action and diversity. The various statements have addressed nominations to its Board and other committees, and have encouraged the principles of affirmative action in admissions and faculty appointments for campuses. For full text of these statements, see AACC's website, *http://www.aacc.nche.edu/mrc/statement.htm.*

Health Professionals for Diversity Coalition

In 1996, the Association of American Medical Colleges (AAMC) saw a need for a coordinated response from the higher education community to the various legal and legislative attacks on affirmative action. Toward this end, they brought together a group of organizations representing the nation's physicians, nurses, and other health care professionals and educators, and formed the ***Health Professionals for Diversity Coalition***. Nearly 50 associations have joined the Coalition, which advocates that the continued use of affirmative action is essential to providing quality health care for all citizens.

A 1996 study by the Robert Wood Johnson Foundation found that minority and women physicians are much more likely to serve minority and disadvantaged populations. Therefore, if access to medical school and other programs that train health care providers is precluded for women and persons of color, medical services to those communities will be even more scarce.

Similarly, the ***New England Journal of Medicine*** reported that patients who are members of minority groups are more likely to consult physicians of the same race or ethnic group. In addition, their study found that communities with high proportions of African American and Latino residents were four times as likely as others to have a shortage of physicians, regardless of community income. The study concluded that African American and Latino physicians have a unique and important role in caring for poor and minority populations. Dismantling affirmative action programs may threaten access to health care for these groups.

In the fall of 1997, the elimination of affirmative action in California, Texas, Louisiana, and Mississippi had a chilling effect on the enrollment of minorities in medical schools. According to AAMC data, applications from underrepresented minorities (African American, Native American, Mexican American/Chicano, and Puerto Rican) in those states declined 17 percent over the previous year, compared to a 7 percent decline outside of the affected states. AAMC President Jordan J. Cohen, M.D., stated, *"...the climate engendered by the Hopwood decision and Prop. 209 is discouraging minorities from applying to medical school. This is an ominous sign for the medical community and our nation, which badly needs a physician workforce that is both diverse and reflective of our society as a whole."*

Throughout its existence the ***Health Professionals for Diversity Coalition*** has issued strong endorsements for diversity and the continued

use of affirmative action in the medical professions. Numerous articles and statements have been issued by the Coalition in opposition to legislative and legal attacks on affirmative action, both nationally and at the state level. More information on the Coalition can be obtained from the website, *http://www.aamc.org/about/progemph/diverse/start.htm.*

AAC&U DiversityWeb

The Association of American Colleges and Universities (AAC&U) and the University of Maryland have designed ***DiversityWeb*** with the support of the Ford Foundation to connect, amplify, and multiply campus diversity efforts through a central location on the Web. Campus practitioners can turn to this site whenever they need to find—or to share—resources for campus leaders making diversity a central educational priority. This effort is part of a larger communications initiative entitled ***Diversity Works***.

Campus officials are invited to join the ongoing conversations about diversity issues by participating in the ***DiversityWeb*** workrooms: Affirmative Action (supported by ACE), Curriculum Transformation, Institutional Vision, Leadership and System Change (AAC&U), and Student Experience and Development (NASPA). These workrooms provide a forum for discussion and debate of challenging ideas, asking questions, and sharing information and updates. Specifically, the Affirmative Action workroom will be used to discuss issues related to affirmative action in higher education, including legislation, court cases, university policies and programs, and existing and needed research that focuses on the impact of both diversity and affirmative action.

A wealth of information and resources are offered through the ***Diversity Works Leader's Guide***, which includes syllabi, models for faculty development, and other materials to help campus practitioners create an environment where diversity is considered part of an ongoing commitment to excellence. The website for ***Diversity Works*** (with access to ***DiversityWeb*** and the ***Leader's Guide***) is: *http://www.aacu-edu.org/Initiatives/diversity.html.*

NACME Statement

In April 1997, a large cross-section of major American corporations and university presidents who constitute the Board of Directors of the National Action Council for Minorities in Engineering (NACME), reaffirmed their commitment to affirmation action in a full-page statement in ***The Wall Street Journal***. In its statement, NACME's leaders, who include Edwin J. Hess, senior vice president of the Exxon Corporation, and Philip J. Carroll, president and CEO of the Shell Oil Company, stated that "*enormous gains have resulted from well-designed affirmative action policies. Consider the engineering field. A quarter of a century ago, African Americans, Latinos, and American Indians—then*

18 percent of the college-age population and the fastest growing component of the nation—comprised only one percent of the engineering workforce." Since 1974, when NACME was established as a private sector initiative to create access to the engineering profession, annual minority graduates in engineering have grown more than 400 percent.

"*NACME represents the nation's most visible success story at the interaction of corporate philanthropy and effective affirmative action,*" stated George Campbell, Jr., the organization's president and CEO. "*In engineering, we've created access unrivaled by any other profession; however, an enormous gap still exists. African Americans, Latinos, and American Indians remain significantly underrepresented and underutilized in engineering. This has profound implications for wealth creation, economic development, and the standard of living for all Americans. Affirmative action is an indispensable tool for our continued progress. . .*" Campbell added.

In reaffirming their unequivocal support for affirmative action, NACME leaders asserted that:

"*A society with a history of deeply rooted exclusionary practices demands proactive policies to create opportunity and to eliminate both conscious and inadvertent discrimination.*

"*NACME's scholarship programs have made it possible for 6,500 minority students to obtain engineering degrees since 1980. It's not preferential treatment when we provide a chance for highly motivated students to realize their full potential.*

"*We believe that the expertise of university admissions officers is more reliable in the complex task of evaluating student's qualifications than rigid numerical standards imposed by external agencies or by the courts. Moreover, the nation is well served by universities that have the freedom to create a healthy, richly diverse intellectual environment.*"

American Association for Affirmative Action

Founded in 1974, the American Association for Affirmative Action (AAAA) is dedicated to the advancement of affirmative action, equal opportunity, and the elimination of discrimination on the basis of race, gender, ethnic background or any other criterion that deprives people of opportunities to live and work. The organization's dedication is realized in its many activities designed to help Equal Employment Opportunity/Affirmative Action (EEO/AA) professionals be more successful and productive in their careers. Check website for information about the issues and activities of AAAA, *http://www.fga.com/aaaa/.*

Affirmative Action and Diversity Project

The Affirmative Action and Diversity Project is a website for research. Many voices offer opinions in the debate surrounding the issues of affirmative action. This website is an academic resource and provides scholars and students with articles, analyses, policy documents, current legislative updates, and an annotated bibliography of research and teaching materials, (Website: *http://humanitas.ucsb.edu/aa.html*).

On the Importance of Diversity in Higher Education

America's colleges and universities differ in many ways. Some are public, others are independent; some are large urban universities, some are two-year community colleges, and still others are small rural campuses. Some offer graduate and professional programs, others focus primarily on undergraduate education. Each of our more than 3,000 colleges and universities has its own specific and distinct mission. This collective diversity among institutions is one of the great strengths of America's higher education system, and has helped make it the best in the world. Preserving that diversity is essential if we hope to serve the needs of our democratic society.

Similarly, many colleges and universities share a common belief, born of experience, that diversity in their student bodies, faculties, and staff is important for them to fulfill their primary mission: providing a high-quality education. The public is entitled to know why these institutions believe so strongly that racial and ethnic diversity should be one factor among the many considered in admissions and hiring. The reasons include:

- **Diversity enriches the educational experience.** We learn from those whose experiences, beliefs, and perspectives are different from our own, and these lessons can be taught best in a richly diverse intellectual and social environment.

- **It promotes personal growth—and a healthy society.** Diversity challenges stereotyped preconceptions; it encourages critical thinking; and it helps students learn to communicate effectively with people of varied backgrounds.

- **It strengthens communities and the workplace.** Education within a diverse setting prepares students to become good citizens in an increasingly complex, pluralistic society; it fosters mutual respect and teamwork; and it helps build communities whose members are judged by the quality of their character and their contributions.

- **It enhances America's economic competitiveness.** Sustaining the nation's prosperity in the 21st century will require us to make effective use of the talents and abilities of all our citizens, in work settings that bring together individuals from diverse backgrounds and cultures.

American colleges and universities traditionally have enjoyed significant latitude in fulfilling their missions. Americans have understood that there is no single model of a good college, and that no single standard can predict with certainty the lifetime contribution of a teacher or a student. Yet, the freedom to determine who shall teach and be taught has been restricted in a number of places, and come under attack in others. As a result, some schools have experienced precipitous declines in the enrollment of African-American and Hispanic students, reversing decades of progress in the effort to ensure that all groups in American society have an equal opportunity for access to higher education.

Achieving diversity on college campuses does not require quotas. Nor does diversity warrant admission of unqualified applicants. However, the diversity we seek, and the future of the nation, do require that colleges and universities continue to be able to reach out and make a conscious effort to build healthy and diverse learning environments that are appropriate for their missions. The success of higher education and the strength of our democracy depend on it.

ENDORSEMENTS

AACSB - The International Association for Management Education
ACT (formerly American College Testing)
American Association for Higher Education
American Association of Colleges For Teacher Education
American Association of Colleges of Nursing
American Association of Colleges of Pharmacy
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Dental Schools
American Association of State Colleges and Universities
American Association of University Administrators
American Association of University Professors
American College Personnel Association
American Council on Education
American Council on Pharmaceutical Education
American Historical Association
American Indian Higher Education Consortium
American Medical Student Association
American Osteopathic Association
American Society for Engineering Education
APPA: The Association of Higher Education Facilities Officers
Association for Institutional Research
Association of Academic Health Centers
Association of American Colleges and Universities
Association of American Law Schools
Association of American Medical Colleges
Association of American Universities
Association of Catholic Colleges and Universities
Association of College and Research Libraries
Association of College Unions International
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Coalition for Christian Colleges & Universities
Coalition of Higher Education Assistance Organizations
College and University Personnel Association
Commission on Independent Colleges and Universities—New York
Consortium on Financing Higher Education
Council for Advancement and Support of Education
Council for Higher Education Accreditation
Council for Opportunity in Education
Council of Graduate Schools
Council of Independent Colleges
Educational Testing Service
Golden Key National Honor Society

Hispanic Association of Colleges and Universities
Institute of International Education
Law School Admission Council
Lutheran Educational Conference of North America
NAFSA: Association of International Educators
National Association for College Admission Counseling
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Graduate and Professional Students
National Association of Independent Colleges and Universities
National Association of Schools of Public Affairs and Administration
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Personnel Administrators
National Collegiate Athletic Association
National Student Exchange
NAWE: Advancing Women in Higher Education
New England Board of Higher Education
Society for Advancement of Chicanos and Native Americans in Science
The College Board
The College Fund/UNCF
The Education Trust
University Continuing Education Association

Updated 2/9/99

AMERICAN COUNCIL ON EDUCATION

Office of the President

July 26, 1996

Dear Colleague:

As you know, the Supreme Court announced on July 1 that it would not review the decision of the U.S. Court of Appeals for the Fifth Circuit in Texas v. Hopwood. The denial of review does not carry the weight of a judicial precedent. We can only speculate about why the Court elected not to take the case. Two of the justices, in a brief opinion, noted that the challenged program had been abandoned, and thus the case was moot and the question of whether it is permissible, under the Constitution, to consider race or national origin in college admissions was not ripe for review. The other seven Supreme Court justices were publicly silent.

A three-judge panel of the Fifth Circuit (which covers Texas, Louisiana, and Mississippi) had found that certain admissions procedures of the University of Texas School of Law violated the equal protection clause of the 14th Amendment. In so finding, two of the judges said that promotion of diversity in a university student body by any reference to an applicant's race or ethnicity was improper. The two judges sought, in effect, to reverse the landmark 1978 ruling of the Supreme Court in Regents of the University of California v. Bakke. Bakke consistently has been read to allow some consideration of race and ethnicity, but did not permit the challenged set-aside of a particular number of class places for minority students.

The third Fifth Circuit judge, no doubt aware that the appeals court lacks authority to reverse the Supreme Court, observed that the Hopwood case did not require or warrant reinterpretation of Bakke. Previously, the district court in Hopwood had endorsed in principle the proper use of race and ethnicity to promote student diversity, in accordance with Bakke, but had rejected the challenged University of Texas program.

Our legal counsel has advised us that Bakke remains good law, and that the Fifth Circuit opinion applies only in the three states in that circuit. At the same time, he notes that recent Supreme Court decisions, such as Adarand v. Pena (1995), although not arising in the field of higher education, reflect a heightened skepticism by the divided Court about affirmative action. To be lawful, affirmative action programs generally must withstand "strict scrutiny" by the courts, a concept the judiciary has interpreted in various ways, albeit to date primarily in cases not involving higher education. Because affirmative action measures at many institutions involve a range of programs and activities that entail varying degrees of risk, he recommends that colleges and universities consult their own lawyers to obtain advice tailored to each institution's circumstances.

We commend to you two recent articles by Martin Michaelson: "Affirmative Action: Few Easy Answers," in the summer issue of Priorities, a publication of the Association of Governing Boards of Universities and Colleges, which summarizes affirmative action law, and "A Time to Increase Public Understanding of Affirmative Action," in the July 19 issue of The Chronicle of Higher Education.

Our associations remain strongly committed to appropriate steps that advance inclusion and pluralism in higher education. American campuses today feature more diverse student bodies and faculties than ever before, but much remains to be done if the door of opportunity is to be opened meaningfully to all sectors of society. We do not believe that now is the time to reverse or abandon the hard-won progress colleges and universities have made, nor that this is the time to proclaim that the promise of higher education is available adequately to all who are qualified.

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The basic educational values of most colleges and universities call for efforts to achieve a diverse student body and faculty—and not only for the benefit of those who are underrepresented. All students benefit from an education in which diverse backgrounds, life experiences, and other relevant characteristics are brought to bear. Justice Powell's opinion in Bakke recognized that.

We will continue to monitor developments related to affirmative action, as well as how institutions respond to the challenge of diversity and inclusion. Please feel free to contact any of the associations if you need further information on this issue.

Sincerely,

Robert H. Atwell
President
American Council on Education

On behalf of the following associations:

American Association for Higher Education
American Association of Colleges and Universities
American Association of Colleges for Teacher Education
American Association of Colleges of Nursing
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Association of University Professors
American Society for Engineering Education
Association of American Medical Colleges
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
College and University Personnel Association
Council for Advancement and Support of Education
Council of Graduate Schools
Council of Independent Colleges
Educational Testing Service
Hispanic Association of Colleges and Universities
NAFSA: Association of International Educators
National Association for College Admission Counseling
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Personnel Administrators
National Association of Women in Education
National Collegiate Athletic Association
National University Continuing Education Association
The College Board
United Negro College Fund

AAC&U•AACRAO•AACC•AASCU•ACE•AALS•AAMC•ACCT•AJCU•CUPA•CASE•
HACU•NACUBO•NAICU•NACAC•NASULGC•NASFAA•NASPA•NAFEO•NAWE•
COLLEGE BOARD•UNCF

September 13, 1995

Dear Colleague:

On behalf of the higher education associations listed below, we are writing to advise you on recent developments concerning affirmative action. In the past two months, a series of events has conspired to thrust this issue into the forefront of the national political debate, the outcome of which will have serious consequences for colleges and universities.

Over the past three decades, affirmative action has played a significant part in opening up employment opportunities for qualified women and minorities on college and university faculties and staffs, and in expanding educational opportunities for women and minority students. Such programs – whether required by the federal government, as is the case in employment, or undertaken voluntarily by institutions, as is almost universally the case in admissions – continue to be needed to expand equal opportunity and to help colleges and universities achieve their educational goals.

Despite recent legal setbacks and political controversies, affirmative action enjoys widespread support within higher education as a useful and important tool that helps colleges and universities achieve the goals of equal opportunity, educational quality, diversity, and inclusion. This support is underscored by the fact that the boards of directors of a number of the associations listed below recently passed resolutions strongly endorsing the continued use of affirmative action in hiring, contracting, and admissions. We are communicating that support to policy makers, and urge all higher education institutions, to the extent it is consistent with their missions, to maintain their efforts to expand opportunities for historically disadvantaged minorities and women of all races.

However, recent developments in the judicial, legislative, and executive branches at the federal level, at the University of California, and in the political arena have called into question the future viability of affirmative action.

Judicial Action

Adarand v. Pena. On June 12, the Supreme Court, in a 5-4 decision, ruled that federal affirmative action programs using race as a basis for preferential treatment are subject to "strict scrutiny" by the judiciary. Under this test, such programs are allowable only if they have a "compelling" reason for using racial classifications and are "narrowly tailored" to achieve their goals. While *Adarand* did not abolish the use of affirmative action in contracting – in fact, the decision explicitly acknowledged that under some circumstances it may be justified – it did establish a new hurdle for it to clear. Just how affirmative action programs can meet this test, the Court did not reveal.

For an excellent discussion of the ambiguities created by this decision, and its possible implications for colleges and universities, we refer you to an article by Martin Michaelson on the back page of the July 28 *Chronicle of Higher Education*. Obviously, until and unless federal affirmative action programs are changed or ended, higher education institutions that receive federal

affirmative action programs are changed or ended, higher education institutions that receive federal grants, contracts, or student aid funds must continue to meet all applicable requirements in the areas of contracting and employment. In terms of admissions, we remain guided by the *Bakke* decision, which outlawed the use of quotas but embraced the consideration of race as one factor that could be used to help attain diversity in the student body.

Podberesky v. Kirwan. The Supreme Court in May refused to hear arguments in the case of *Podberesky v. Kirwan*, letting stand an appeals court ruling that the University of Maryland's Banneker minority scholarship program was unconstitutional.

Administration and Congressional Action

On July 19, President Clinton announced the results of the administration's review of federal affirmative action programs. While the president issued a ringing defense of affirmative action in his speech, he also proposed a number of steps to guarantee that such programs operate fairly and in keeping with their original objectives.

The president gave no indication that he planned changes in federal affirmative action requirements in the area of employment. Nor have we seen any indication that the administration plans to alter its stance on minority scholarships. Despite the judicial determination that Maryland's Banneker scholarship program was unconstitutional, the Department of Education's policy guidance, which holds that institutions may employ minority-targeted scholarships to remedy past discrimination or achieve diversity in the student body, remains in effect.

Senate Majority Leader Bob Dole has introduced legislation to end federal affirmative action programs, and similar legislation has been proposed in the House. In addition, some Republican House members may seek to attach anti-affirmative action amendments to various appropriations bills. We oppose any federal intervention which would arbitrarily eliminate those affirmative action programs which have ensured equal opportunity and access to qualified women and minorities.

University of California Board of Regents

On July 20, the University of California Board of Regents voted to change their policies on affirmative action in admissions, hiring, and contracting. The resolution approved by the board prohibits the university from using race, religion, sex, color, ethnicity, or national origin as a criterion for admission effective January 1, 1997. At the same time, it instructs the university to develop supplemental criteria, such as economic disadvantage or a poor social environment, that would be considered in the admissions process. In addition, it increases the share of students to be admitted "solely on the basis of academic achievement" -- i.e., class rankings and test scores -- from 40-60 percent to 50-75 percent.

In the areas of contracting and hiring, the regents extended to the UC system an executive order issued by Gov. Pete Wilson ending state affirmative action programs. However, the board also specified that its action would not prohibit the university from taking whatever actions are necessary to maintain eligibility for federal or state funds, including grants and contracts.

The action by the UC board creates several disturbing precedents. Through this decision, the governing board of one of the most multicultural universities in the most multicultural state in the nation has taken a significant step away from inclusiveness by rejecting the use of race, ethnicity, and gender as factors to assist in attaining diversity. If, as many suspect, the effect of the Regents' action will be to significantly diminish the diversity of

UC's student body, faculty, and staff, this action may negatively affect the quality of education at those institutions. We are concerned that other colleges and universities might overreact to this decision.

Public opinion polls indicate that a majority of Americans oppose "preferences" based on race or gender. However, they also evidence strong public support for measures that guarantee fairness, and for special efforts to compensate for social and economic disadvantage. It is clear that we in higher education must do a better job of educating the public and policy makers about the importance of diversity and explaining how the procedures and standards we use in admissions and faculty hiring are critical to fostering equal opportunity and provide important educational benefits for all students.

Please be assured that we will monitor legislative, regulatory, and judicial developments on this front closely, and report to you on their implications for your institutions. In the meantime, if you have any questions or concerns, please feel free to contact any of the associations about them.

Sincerely,

Association of American Colleges and Universities
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Law Schools
Association of American Medical Colleges
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
College and University Personnel Association
Council for Advancement and Support of Education
Hispanic Association of Colleges and Universities
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of College Admission Counselors
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Personnel Administrators
National Association for Equal Opportunity in Higher Education
National Association for Women in Education
The College Board
United Negro College Fund

Governors

Recognizing that affirmative action programs still are necessary, our nation's governors have expressed bipartisan support for these programs. As Governor Tom Ridge (R-PA) stated, *"There has been racial and gender discrimination; there continues to be racial and gender discrimination. Affirmative action, in my judgment, should continue if you show more good than harm."*

Governor Gary Locke (D-WA) was active and vocal in his opposition to Initiative 200 (**see Threats, pages 7-8**). He called it a "*deceptive and ill-spirited initiative*" and encouraged voters to continue "*support for the affirmative action programs that give women and minorities a chance to compete.*" Governor Locke was admitted to Yale University on an affirmative action scholarship, and he frequently touted his own education and public service career as an affirmative action success story. He implored corporate leaders to fight I-200 with their clout and with their checkbooks. Governor Locke and former Governor Daniel Evans did a series of television spots slamming I-200. Despite the passage of I-200, Governor Locke believes that recruitment, outreach, and retention programs can still be saved.

Governor Christine Todd Whitman (R-NJ), in a speech at Trenton State College in early December, stated that *"minorities and women are underrepresented in government and academic leadership,"* as well as in the private sector. *"Discrimination still exists....Affirmative action alone will not solve all the problems of underrepresentation and discrimination. But it can help....We have a stronger workforce today because affirmative action has expanded the pool of qualified candidates for professional advancement."*

Governor Whitman stated that *"affirmative action is not a scheme to hire unqualified people, but a matter of ensuring that we spread the net wide enough so that everyone has real opportunities to gain jobs and promotions. ...True affirmative action ensures that the person being selected for the position is a person qualified to do the job."*

Under Governor Whitman's administration, two new laws have been enacted to strengthen affirmative action practices in New Jersey. The first gives businesses that previously have not been awarded state contracts a better chance to compete for such contracts. The second changes the way in which set-aside goals are calculated. No longer will the *intention* of the contract recipient to subcontract to minority-owned or women-owned businesses be counted as compliance. *"We are going to follow the dollars actually awarded—moving from a perception-based*

to a fact-based system," said Governor Whitman.

Governor Whitman also cited statistics reported by the bipartisan ***Glass Ceiling Commission***, which found that women and minorities, who constitute 57 percent of the work force, hold less than 5 percent of all senior managerial positions in corporate America. She also warned that the national debate over affirmative action *"may ultimately threaten the progress we have made"* toward equality. *"I know I can't end employment discrimination single-handedly, but government should set an example of inclusiveness for others to follow."*

Early in his administration, Governor Thomas R. Carper (D-DE) signed an Executive Order that declared, in part, that the state has a *"commitment to equal employment opportunity"* and that all state agencies *"are directed to pursue diligently the recruitment and promotion of qualified women and minorities and to be vigilant in complying with the laws prohibiting discrimination in employment."* The order further stated that *"the work atmosphere in state agencies should be one that fosters mutual respect and understanding among persons of different races, sexes, and faiths."* Each state agency must submit an annual affirmative action plan that ensures compliance with all federal and state laws, sets forth goals and objectives for ensuring equal employment opportunities in hiring and promotion, and establishes strategies to remedy underrepresentation of minorities and women within the agency.

Governor John G. Rowland (R-CT) agreed that the reverse-discrimination argument doesn't hold up under close scrutiny. *"I think most people here think it's working fairly well. I don't see the backlash."*

In his inaugural speech, Governor Gray Davis, Jr. (D-CA) addressed diversity when he declared that California is "*the most culturally complex state on planet Earth.*" He vowed to support efforts to revamp the University of California admissions system, which has seen minority enrollment drop in the wake of Proposition 209. Davis pledged to "*guarantee admission to students who truly excel by graduating in the top 4 percent of their high school–whether it's West Los Angeles or East Palo Alto.*"

National Perspective

President Clinton

In his address on affirmative action in the Rotunda of the National Archives on July 19, 1995, President Bill Clinton said, *"For an example of where the best of our future lies, just think about our space program*

and the stunning hook-up with the Russian space station. That program, the world's finest, began with heroes like Alan Shepard and Senator John Glenn, but today it's had American heroes like Sally Ride, Ellen Ochoa, Leroy Child, Guy Bluford, and other outstanding, completely qualified women and minorities.

"How did this happen? Fundamentally, because we opened our hearts and minds and changed our ways. But not without pressure—the pressure of court decisions, legislation, executive action, and the power of examples in the public and private sectors. Along the way, we learned that laws alone do not change society; that old habits and thinking patterns are deeply ingrained and die hard; that more is required to really open the doors of opportunity. Our search to find ways to move more quickly to equal opportunity led to the development of what we now call affirmative action.

"The purpose of affirmative action is to give our nation a way to finally address the systemic exclusion of individuals of talent on the basis of their gender or race from opportunities to develop, perform, achieve, and contribute. Affirmative action is an effort to develop a systematic approach to open the doors of education, employment, and business development opportunities to qualified individuals who happen to be members of groups that have experienced long-standing and persistent discrimination."

White House Initiative on Race

Speaking in June 1997 at the commencement of the University of California, San Diego, President Clinton initiated the concept of a national dialogue on race relations. Toward that end he formed a stellar panel that had as its charge the task of conducting candid conversations on U.S. race relations, examining ways to expand educational and employment opportunities, and building communities of mutual respect within our increasingly diverse democracy. The advisory panel, chaired by noted scholar Dr. John Hope Franklin, helped educate the American people on issues of race, promoted a dialogue in every community, encouraged leaders to bridge the racial divides, and recommended solutions to racial problems.

The advisory panel held a roundtable discussion on the value of diversity in higher education at the University of Maryland. Several college presidents, faculty, and other campus officials participated in the discussion of the research on what works on campus, methods for promoting diversity in higher education, and the importance of civil rights data collection and enforcement. (Website: *http://www.whitehouse.gov/Initiatives/OneAmerica/america.html.)*

In September 1998, after a year-long series of town meetings, the Advisory Board concluded its work and presented its recommendations to President Clinton. The report, ***One America in the 21st Century: Forging a New Future***, gave members of the Advisory Board an opportunity to share with the President their observations on what they saw and heard about race and its impact upon communities throughout the country. The Board report also offered recommendations on specific steps that should be taken to eliminate racial disparities experienced by people of color in such areas as employment, housing, law enforcement, and education.

Pathways to One America In The 21st Century: Promising Practices for Racial Reconciliation, a subsequent report released by the Advisory Board in January 1999, is a reference guide of race-based programs. "Promising Practices" are defined as efforts or programs intended to increase awareness of racial issues; improve the lives of individuals who are affected by past and present discrimination, or eliminate racial prejudice and discrimination from societal institutions such as workplaces, schools and retail institutions. These programs demonstrate what leaders at all levels of public and private life can do when they commit themselves to finding the common good across racial lines. Although this publication highlights only a fraction of the community efforts working towards improving race relations, they serve as examples of effective programs contributing to this country's on-going dialogue on racial reconciliation.

Colin Powell

Another national figure who supports affirmative action is Colin Powell. Living in segregated Alabama in the 1960s, Powell experienced discrimination. *"I can remember very well being denied access to a lunch counter. Racism still corrodes America."* He admits that he was helped by affirmative action and believes that government has a role, however limited, in giving minorities special consideration.

Vernon Jordan

Vernon Jordan, former president of the National Urban League, said in 1986: *"Affirmative action is first and foremost a legitimized constitutional remedy for past discrimination. It is a remedy in keeping with the basic principle that where there is a constitutional violation, there must be a remedy appropriate in scope to that violation."*

Office of Federal Contract Compliance Programs Data

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is responsible for the enforcement of equal employment opportunity programs that apply to government contractors and subcontractors. As a condition of their government contract, federal contractors and subcontractors are subject to the laws of

antidiscrimination and are required to take positive steps to ensure that minorities, women, individuals with disabilities, and veterans have an equal opportunity to compete for employment. Approximately 22 percent of the labor force (26Êmillion workers) in America work for federal contractors or subcontractors. The federal government awarded more than $161 billion involving 176,000 contracts in Fiscal Year 1993.

According to data from the OFCCP, the number of debarments of federal contractors and back pay awards has increased during the more vigilant Clinton administration. Five federal contractors have been debarred since 1992. OFCCP obtained salary adjustments for 4.3 million people in 1994, compared with about 1 million in 1991.

Some of the main infringements found in OFCCP reviews are:

- failure to maintain or update the affirmative action plan
- insufficient or inadequate affirmative action steps
- failure to maintain or submit applicant flow data or other supporting information
- failure to include analyses of prior year's hiring, promotion, and transfer practices
- unacceptable goals

Business Sector

As we approach the year 2000, the percentage of men of color and all women entering the labor force will be increasing. Consequently, employers without plans to eliminate barriers to hiring and promotion will be cut off from large segments of America's labor force. Having seen these trends for decades, today's corporate leaders view affirmative action as a business necessity in an increasingly diverse world. By expanding the pool of talent for companies to draw on, affirmative action brings diverse skills and backgrounds into the workforce, thereby helping firms compete domestically and internationally.

Last fall in Washington state, Rick Fersch, president and CEO of Eddie Bauer, called a meeting of executives from the technology, communications, manufacturing, and retail fields to discuss ways to defeat Initiative 200. "*The main message is simple*," Fersch said, "*I-200 will create a spirit in Washington that is not conducive to business. It puts a taint on a state that is known to be progressive*."

As a signal of their support for affirmative action, CEO's of corporations including Exxon, 3M, Boeing, Amoco, Bechtel, Goodyear, Sony

Electronics, and Dupont believe that "*A society with a history of deeply rooted exclusionary practices demands proactive policies to create opportunity and to eliminate both conscious and inadvertent discrimination....We believe that developing and utilizing the full potential of the entire population of our society is critical not only to our nation's economic growth but to our political stability, to our social well-being, and to our global leadership responsibilities.*" (Wall Street Journal, 1997)

In 1994, the United States Department of Labor presented Proctor & Gamble the ***Opportunity 2000 Award***, which is given annually to one company committed to instituting equal employment opportunities and creating a diverse workforce. Proctor & Gamble was recognized for its multifaceted, comprehensive affirmative action and executive development programs. In May 1995, Edwin L. Artzt, then Chairman of the Board and CEO of Proctor & Gamble, received the ***Private Sector Leadership Award*** from the Leadership Conference on Civil Rights. In accepting this prestigious award, he said, *"Affirmative action has been a positive force in our company. What's more, we have always thought of affirmative action as a starting point. We have never limited our standards for providing opportunities to women and minorities to levels mandated by law....Regardless of what government may do, we believe we have a moral contract with all of the women and minorities in our company—a moral contract to provide equal opportunity for employment, equal opportunity for advancement, and equal opportunity for financial reward."*

"Affirmative action makes good business policy," says the National Association of Manufacturers. Ninety percent of 120 corporate CEOs surveyed by ***Fortune*** magazine in 1984 said their companies had implemented affirmative action programs to satisfy "corporate objectives unrelated to government regulations." Indeed, 95 percent said they would continue to use them regardless of government requirements. In a more recent 1992 survey of CEOs, only 2 percent called affirmative action programs "poor."

Lucio A. Noto, Mobil Corporation Chairman and CEO, remarked, *"I have never felt a burden from affirmative action because it is a business imperative for us."* In a recent letter to shareholders, Noto wrote, *"A diverse, inclusive and productive workforce is essential to our future. Early in 1996 we heightened our focus on inclusion and diversity, and tied management compensation to progress in these areas. This effort has the full commitment of our board and senior management, as well as my own personal attention."*

Similarly, chemical giant DuPont recognizes the business value of promoting diversity. More than a decade ago, DuPont decided to go beyond affirmative action regulations by setting a goal of making half of its new hires for professional and management positions women or minorities. Likewise, the Business Roundtable and the National Association of Manufacturers repeatedly have endorsed affirmative action.

Hugh L. McColl, Jr., Chairman and CEO of Bank of America, the largest bank in the United States, is *"bothered by the recent ideological siege against the purpose of affirmative action."* Several years ago, McColl pledged to spend 10 percent of the bank's procurement dollars doing business with minority-owned firms. The actual amount allocated has been at least 15 percent since setting this goal. *"It just makes good business sense for the private sector to assume more responsibility for the welfare of its communities, its employees, and its consumers,"* says McColl.

In a speech given recently, McColl extolled the virtues of diversity, inclusion, meritocracy and unity, and the power that each carries in the workplace. McColl stated that differences in cultural and personal characteristics make the workforce diverse; yet characteristics that are shared serve to unify the workplace. *"If we fail to embrace these differences as blessings, we will not succeed. At the same time, we will not succeed—indeed, we will not survive—if we fail to find unity in our values, our culture, and our purpose as an organization...diversity is important to us as a business imperative"* and we must ensure that "*differences are valued as a source of strength.* "

One of a handful of African Americans named recently to top posts of major U.S. companies was Warren E. Shaw, CEO at Chancellor Capitol Management, a $28 billion New York money-management firm. Shaw said that he and the others named to top posts had *"all been in our businesses for 20 years."* He credited the Great Society programs of the 1960s, and especially affirmative action, for "opening doors" and giving talented managers a chance.

Paul A. Allaire, CEO of Xerox Corporation, and Chairman of the Council on Competitiveness, said, *"Diversity is good for business; more than that, it constitutes a competitive advantage. Let's not forget this simple fact during the debate about affirmative action. For diversity breeds the creative energy companies need to compete in a global economy....Our own experiences tell us that the most diverse companies, companies ruled by a hierarchy of imagination and filled with people of*

all ages, races, and backgrounds are the most successful over time."

"When it comes to affirmative action, we will continue to press the envelope, but at the same time we will be moving to a broader concept—that is, managing diversity," said John F. Smith, Jr., CEO and Chairman of General Motors. *"As a global company, we want to fully benefit from a diverse workforce; ...our diversity is our strength. ...Having people of widely different ethnic, racial, and social backgrounds in our corporations has not slowed our pursuit of excellence—it has accelerated it. We will continue to do everything possible to bring minority group members and women into General Motors and the mainstream economy. We cannot, must not, waste this talent."*

Anthony Patrick Carnevale and Susan Carol Stone, in ***The American Mosaic: An In-Depth Report on the Future of Diversity at Work***, wrote: *"Without some form of affirmative action, there is no guarantee that the effort to achieve fair levels of minority and female representation within organizations would be as widely maintained. Progress was inadequate in the late 1960s before affirmative action went into effect. Organizational cultures are changing, but change is a protracted process. Big gains have been made in some industries, but there is still a long way to go....Furthermore, the elimination of preferences would very likely result in a certain amount of backsliding, even if largely unintentional.*

"From another perspective, it may be moot to argue whether affirmative action should stay in place. As long as antidiscrimination laws remain on the books—and they will remain—a rational means of implementing them is needed. Organizations clearly favor affirmative action over the alternative, an uncertain environment where the absence of clear guidelines would expand the potential for lawsuits. Thus, even if current affirmative action policies were curtailed, they are likely to be resurrected in another form."

Survey of Chief Executive Officers

Organizational Resources Counselors, Inc., a management consulting firm, surveyed 140 corporate executives and found that 95 percent have adopted affirmative action programs in order to meet federal requirements. A significant number—73 percent—would continue tracking their company's progress with numerical objectives even if the federal regulations were lifted. Fifty-eight percent of these companies also have internal voluntary plans, most with numerical objectives.

These CEOs reported uniformly positive attitudes toward the impact of affirmative action on the organizational performance of their workforce. Ninety-four percent reported improvements in hiring and recruitment,

while 88 percent viewed affirmative action programs as effective in increasing promotions, 70 percent in performance appraisals, 53 percent in marketing; 41 percent said that productivity improved as a result of affirmative action programs.

For 62 percent of the respondents, the achievement of equal employment opportunity (EEO) goals is included in the performance appraisal process as a measure of management accountability. Thirty-five percent indicated that incentive compensation for executives is tied to EEO performance.

The corporations surveyed represent a cross section of American industries, with 39 percent in manufacturing, 15 percent in finance, 11 percent in utilities, and 10 percent in service industries. Nearly 60 percent reported employing over 10,000 persons.

Glass Ceiling Commission

According to a 1995 fact-finding report of the bipartisan *Glass Ceiling Commission*, only 5 percent of Fortune 2000 senior managers are white women, and they generally are paid less than their male counterparts. More than 95 percent of Fortune 1000 executives are white males.

The Commission was created during the Bush administration and directed by former Secretary of Labor Lynn Martin. Members of the Commission represent business as well as advocacy groups. The report, entitled ***A Solid Investment: Making Full Use of the Nation's Human Capital***, stated that women are making progress, but the *"rate of change is discouragingly slow."*

Former Secretary of Labor Robert Reich, in a message accompanying the report, commented, *"Narrowing the pool of talent from which they draw is—among other things—a blunder in competitive tactics."*

Today, more women are in the pipeline for top corporate jobs. In 1980, white women accounted for 27.1 percent of all middle- and upper-level managers, while women of color accounted for 3.2 percent. By 1990, those numbers had risen to 35.3 percent for white women and 6.9 percent for women of color. Women have achieved the most success in the fields of finance, insurance, and real estate.

During the decade from 1982 to 1992, women of color made only nominal gains in senior management positions: African American women filled 2.3 percent of these positions in 1992, up from 1 percent in 1982; Asian American women filled 1.8 percent of these positions in 1992, up from 0.4 percent in 1982. The percentage for Hispanic women actually declined, from 1.3 percent in 1982 to 0.2 percent in 1992.

The report described successful practices by companies such as Xerox, Eastman Kodak, Johnson and Johnson, and Corning Glass, to name a few. These practices focused on leadership and career development, rotation and non-traditional employment, mentoring, workforce diversity, and family-friendly policies.

"Companies that have successfully eliminated the barriers that prevent minorities and women from [entering] top business positions generally have done so by addressing stereotypes and making diversity part of their strategic business plan, and all have the support from the companies' chief executive officers," the report concluded.

Pay Inequities

The return on investment in education does not pay off as well for women as for white men. A 1982 analysis by the National Committee on Pay Equity showed that college-educated women of color earn about the same as white male high school graduates, and nearly $15,000 less than college-educated white men. **(See graph on page 52 for data on income by race, gender, and educational attainment.)**

In a 1994 Department of Labor study of the labor market, women represented 51.2 percent of the U.S. adult population, African Americans represented 12.4 percent, and Hispanics represented 9.5 percent. Yet, the following chart shows the disparities in representation of these groups in selected occupations:

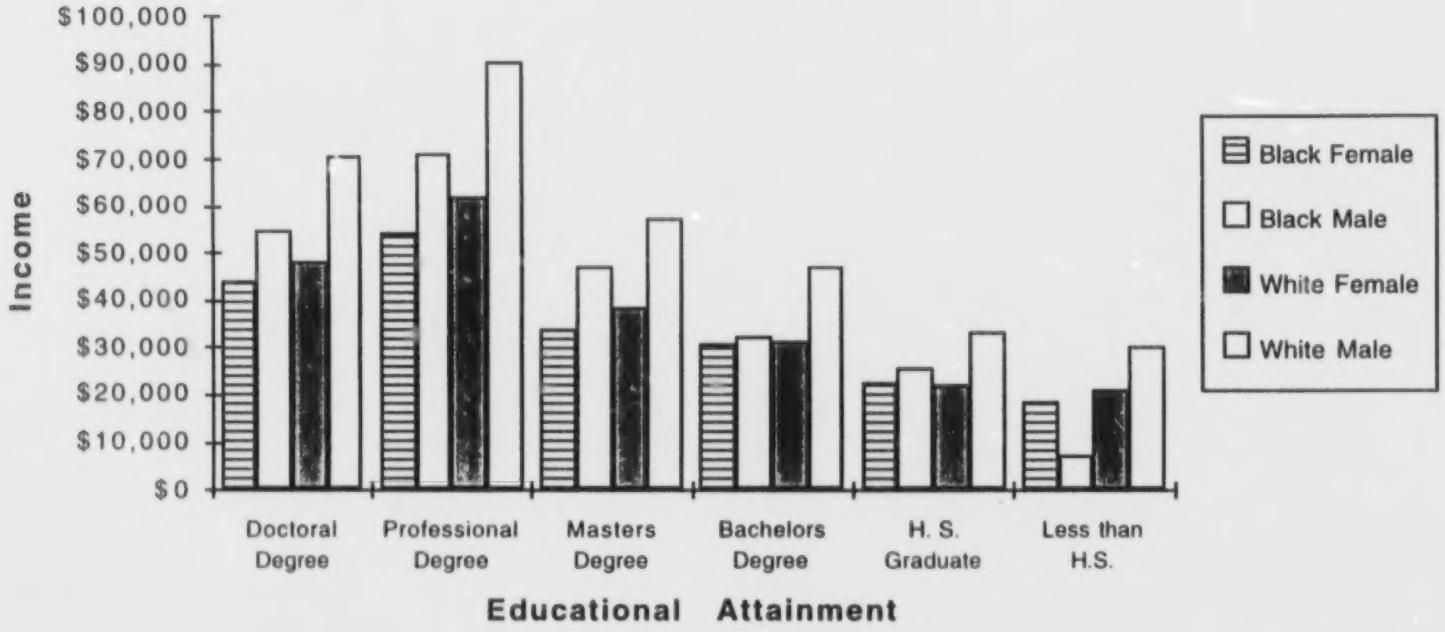
Occupation	Women	African Americans	Hispanics
Doctor	22 %	4 %	5 %
Lawyer	24 %	3 %	3 %
Architect	16 %	1 %	3 %
Engineer	8 %	4 %	3 %
Full-time Faculty	34 %	5 %	2 %

Goals and Timetables Are Consistent with Regular Business Practices

The use of goals and timetables and other numerical measures to track the employment of women and minorities is nothing new, and indeed is consistent with the way corporations handle other important administrative matters. In fact, the current standards for affirmative action were recommended in the late 1960s to the Nixon administration by a group representing 350 large corporations.

Testifying before a House subcommittee in 1985, William McEwen, Director of Equal Opportunity Affairs at Monsanto Company in St. Louis, said that *"business...sets goals and timetables for every aspect of its operations—profits, capital investment, productivity increases, and promotional potential for individuals. Setting goals and timetables for minority and female participation is a way of measuring progress and focusing on potential discrimination."*

1990 Income by Race, Gender, and Educational Attainment



Notes: No comparable data was available for Hispanics, Asian Americans, and American Indians. Income levels are for executive, administrative, and managerial occupations in the private sector which includes business services, communications, construction, entertainment, manufacturing, public administration, and utilities industries.

Source: 1990 Bureau of the Census

Answering the Critics

- **Countering Arguments**
- **"The Case for Affirmative Action" — Leadership Conference on Civil Rights**
- **"Affirmative Action: Myth v. Reality" — American Association of University Women**

Countering Arguments

Opponents of affirmative action advance a number of arguments and myths that should be answered forthrightly. Among the arguments are these:

(1) Affirmative action has caused reverse discrimination against whites. In a recent editorial, Mortimer B. Zuckerman, editor-in-chief of ***U.S. News & World Report***, referring to affirmative action in general, said that *"a program to end discrimination in the name of justice became a program to visit injustice on a different set of people."* (Zuckerman, 1995.)

A 1995 analysis by the U.S. Department of Labor found that affirmative action programs do not lead to widespread reverse discrimination claims by whites, and a high proportion of claims that are filed are found to lack merit. These findings firmly refute the charge that affirmative action has helped minorities at the expense of white males. The analysis found that fewer than 100 out of 3,000 discrimination cases filed involved reverse discrimination, and in only six cases were such claims substantiated. *"The paucity of reported cases casts doubt on the dimension of the reverse discrimination problem,"* the report said. (Ross, 1995.)

USA TODAY/CNN/GALLUP POLL, March 24, 1995
Affirmative Action The Public Reaction by Julie Stacey

An overwhelming majority of white Americans deny ever having been negatively impacted by affirmative action.

- When asked about their personal experiences, the overwhelming majority of white respondents said they had not experienced exclusion in employment or college admissions due to affirmative action in favor of racial minorities.

  98% of respondents said they had never been denied admission to a school as a result of any affirmative action program based on race.

  92% of respondents said they had never been passed over for a promotion that went to a member of a racial minority.

  88% of respondents said they had never had an experience in which they were not offered a job that went to a member of a racial minority.

- Respondents had even fewer experiences being negatively affected by affirmative action programs that favor women.

  98% of male respondents said they had never been denied admission to a school as a result of any affirmative action program based on gender.

  93% of male respondents said they had never been passed over for a promotion that went to a woman.

  92% of male respondents said they had never had an experience where they were not offered a job that went to a woman.

(2) Persons should be selected for positions based on merit alone. The question is how "merit" itself is measured. Usually, when people say "merit," they mean scores on a test, examination, or some other standardized assessment. However, as a University of California Medical School official said recently: *"Medical school is not a reward for high test scores or grades. Medical schools have to decide who is going to fulfill the most pressing needs of society, and that doesn't correlate extremely well with test results and grades."* (Bernstein, 1995.) Cultural sensitivity toward persons from different backgrounds, interpersonal skills, strength of character, insight, experience, maturity, judgment, and communication skills—all of these are "meritorious" qualifications that relate to an individual's performance on the job.

In stark contrast, in ***The Bell Curve***, authors Richard J. Herrnstein and Charles Murray imply that minorities in the District of Columbia would be better served by well-trained police officers who scored high on selection tests. It is questionable whether the citizens of any city in the nation would feel better served by police officers who were selected only for their high written test scores. "Merit" involves much more than the ability to perform well on paper-and-pencil tests.
Ellis Cose, author of ***The Rage of a Privileged Class,*** *wrote* "The Myth of Meritocracy," in ***Newsweek***, (April 3, 1995): *"Critics of affirmative action have not explained how abolishing it can lead to a meritocracy as long as other forms of favoritism continue to flourish. Nor have they shown any real enthusiasm for attacking preferential treatment in all its guises, as opposed to aiming their animus solely at affirmative action. Nor, for that matter, have they demonstrated much of an appetite for stepping up enforcement of anti-discrimination laws, or pouring resources into (and increasing demands on) inner-city schools. They are not, by and large, proposing anything that, by distributing society's benefits and opportunities more broadly, might eventually move the nation closer to the meritocracy they profess to desire. Instead of solutions, they are merely offering a scapegoat: this awful thing called affirmative action."*

(3) Affirmative action has not helped minorities. This statement is repeated often. Citing black unemployment rates, which have remained twice as high as those of whites, economist Farrell Bloch argues that *"the evidence demonstrates that affirmative action has not significantly enhanced the employment prospects for the most disadvantaged African Americans."* (Bloch, 1995.)

Studies show that minorities have made gains in occupations not usually associated with advantaged status—law enforcement, fire fighting, and skilled construction work.

These areas of employment have shown dramatic results through aggressive implementation of affirmative actions plans or their enforcement by the courts. From 1983 to 1992, the representation of African American police officers in the 50 largest U.S. cities grew from 12.4 to 17.3 percent. Similarly, the number of Hispanic officers rose from 6.8 to 8.3 percent. In 1973, the Los Angeles Fire Department (LAFD) was 100 percent male and 94 percent white. A federal court secured a consent decree from the LAFD with specific affirmative action targets. In 1995, the LAFD was 26 percent Hispanic, 13 percent African American, 6 percent Asian, and 4 percent female (Carter, 1996).

In the private sector, minority- and female-owned construction firms have gained a foothold in this most homogeneous of industries—primarily because of affirmative action. In the past, minority firms often were too small to bid on competitive contracts and white-owned firms seldom took on minority firms as subcontractors. With affirmative action, however, cities and local governments began to set aside a portion of their construction business for minority-owned companies or required large, white-owned firms to subcontract with firms owned by women and minority men. Likewise, large increases in minority and female employment among sheet metal and electrical workers also were recorded.

(4) Affirmative action produces a feeling of inferiority in women and minorities and creates a negative stereotype in the minds of white males. Both of these statements have been repe ted over and over until they have assumed the semblance of fact. However, no national survey of affirmative action beneficiaries has been done, and the claims by affirmative action's detractors are mostly anecdotal or speculative.

One black sociology professor, reacting to the anecdotal thesis that affirmative action harms blacks, stated forcefully, *"I have never felt stigmatized, nor have I concerned myself with whether or not whites viewed my presence or success as undeserved."* (Clayton, 1992.) The contention that affirmative action creates a negative stereotype in the minds of white males implies naively that whites had no negative stereotypes of minorities in their minds before. That theory runs decidedly counter to the nation's history. *"Any stigma or negative stereotypes associated with race have existed in this country long before affirmative action was ever thought of."* (Wilson, 1995.) In addition, it is never argued that a stigma is felt by the sons and daughters of alumni or athletes who are admitted to college with less than competitive qualifications.

(5) We should have a color-blind society. That's what Dr. King wanted. Martin Luther King, Jr. wanted a society in which *"people were judged by the content of their character."* Unquestionably, he was referring to an ultimate state of race relations in our culture, but he was not talking about the path we would have to take to achieve that goal.

In the Supreme Court's 1978 *Bakke* case, Justice Harry Blackmun presents the most eloquent argument for affirmative action based on color to eradicate discrimination.

> *"I suspect that it would be impossible to arrange an affirmative action program in a racially neutral way and have it successful. To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—dare not—let the Equal Protection Clause perpetuate racial supremacy."*

As Secretary of Labor Robert Reich has argued, "angry white males" are venting their frustrations at minorities and women when the real problem they face (along with everyone else) is an increasingly competitive global economy that has produced massive changes in the domestic economy and drastically altered the nature and demands of the job market.

Is Affirmative Action Still Necessary?

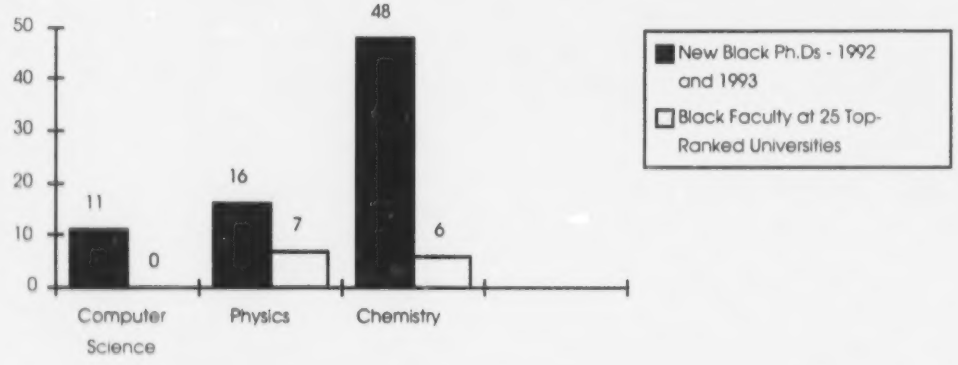
Nearly two decades ago, some national higher education leaders wrote: *"We hope that race and other minority status will be much less of a distinguishing feature of American society in the future as we overcome the consequence of past discrimination in education and elsewhere. Race or other minority status would thus become less germane to achieving diversity in student bodies and to ensuring prospective service to the public....Significant progress has already been made within higher education, but there is still a substantial way to go."*

That statement of the *Carnegie Commission on Higher Education* shows how overly optimistic educators were about the possibility of rapid change in higher education. The following illustrations demonstrate that resistance to change is characteristic of other areas of society as well.

- A study of faculty hiring practices found that once a minority hiring goal was met, departments stopped seeking minority applicants and, indeed, pulled their ads from minority publications, regardless of the number of vacancies that arose subsequently. (Finkelstein, 1984.)

- The ***Journal of Blacks in Higher Education*** found that an increasing number of blacks were awarded Ph.D.s in the natural sciences in 1992 and 1993. However, these graduates are not being recruited to the faculties of America's highest-ranking universities. **(See graph below.)**

An Increasing Number of New Black Ph.D.s Are Being Awarded in the Natural Sciences but these Graduates Are not Being Recruited to the Faculties of America's Highest-Ranked Universities



Source: Journal of Blacks in Higher Education, 1995

- Minorities—particularly minority females—typically are clustered at the lower levels of the professoriate as assistant professors and non-tenure-track lecturers, and their continued presence is tenuous at best. The possibility of their developing a critical mass and thereby becoming a permanent presence can be ensured only with the continuation of some form of affirmative action.

- Youth of color represent an increasing share of the college-age population. However, despite substantial enrollment growth, minorities are severely underrepresented in college enrollments on predominantly white four-year campuses. Approximately 30 percent of all 18- to 24-year-old high school graduates are American Indian, Hispanic, or African American, compared with only 16 percent of all four-year college students.

- In 1990, an Urban Institute study utilizing pairs of black and white job applicants with identical credentials found that in 476 hirings in Washington, DC and Chicago, *"unequal treatment of black job seekers was entrenched and widespread, contradicting claims that*

hiring practices today either favor blacks or are effectively color blind. In 20 percent of the audits, whites were able to advance further through the hiring process than equally qualified blacks....[A] similar study using Hispanic job applicants found them discriminated against 29 percent of the time in San Diego and 33 percent of the time in Chicago." (Turner, 1991.)

- In 1994, the Chevy Chase Federal Savings Bank agreed to an $11 million settlement of a lawsuit in which it was charged with "redlining" in mortgage lending by refusing to serve minority neighborhoods in Maryland. (Wilson, 1995.)

- In 1992, New York's Manufacturers Hanover Trust rejected 18 percent of loan applications from high-income whites, but more than twice as many—43 percent and 45 percent—from high-income African Americans and Hispanics. (Malveaux, 1992.)

These examples illustrate how institutions slip into old practices even when those practices are strictly forbidden by law (for example, redlining). In spite of affirmative action, employers tend to favor whites, particularly white males, over equally qualified African American or Hispanic applicants. As Crosby and Clayton have pointed out:

"Much white male resistance to affirmative action may spring from an unwillingness on the part of any given white man to recognize the true extent to which his gender and his ethnicity, and not simply his own individual merit, have won him rungs on the ladder of success." (Clayton, 1990.)

References

Bernstein, Richard. "Move Under Way in California to Overturn Higher Education's Affirmative Action Policy," ***The New York Times,*** January 25, 1995: p. B7.

Bloch, Farrell. "Affirmative Action Hasn't Helped Blacks," ***The Wall Street Journal***, March 1, 1995: p. A15.

Carter, Deborah J., and Reginald Wilson. ***Fourteenth Annual Status Report on Minorities in Higher Education***. Washington, DC: American Council on Education, 1995.

Clayton, Susan D., and Faye J. Crosby. "Affirmative Action and the Issue of Expectancies," ***Journal of Social Issues*** 1990, 46, pp.Ê61-79.

Clayton, Susan D., and Faye J. Crosby. ***Justice, Gender and Affirmative Action***. Ann Arbor: University of Michigan Press, 1992, p. 16.

BEST COPY AVAILABLE

"Exploding the Big Lie—The Truth About Affirmative Action." Minority Business Enterprise Legal Defense and Education Fund, March 14, 1995, pp. 4, 6.

Finkelstein, Martin. ***The American Academic Profession***. Columbus: Ohio State University Press, 1984, p. 193.

Johnson v. Transportation Agency, 480 U.S. 616 (1987).

Malveaux, Julianne. "The Parity Imperative." ***The State of Black America***. Washington, DC: National Urban League, 1992, p. 283.

Regents of the University of California v. Bakke, 438 U.S. 265 (1978).

Ross, Sonya. "Affirmative Action." Associated Press, March 31, 1995.

Turner, Margery Austin, et al. ***Opportunities Denied, Opportunities Diminished: Discrimination in Hiring.*** Washington, DC: The Urban Institute, September 1991: pp. 91-99.

Wilson, Reginald. "Affirmative Action: Yesterday, Today and Beyond." Unpublished, May 1995.

Zuckerman, Mortimer B. "Fixing Affirmative Action." ***U.S. News & World Report***, March 20, 1995: p 112.

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Affirmative Action in Education: America's Future Depends on Developing the Talents of ALL the Nation's Students

Overview

Affirmative efforts to extend equal educational opportunities to qualified women and people of color have been underway for over twenty five years. These efforts have significantly increased the participation of underrepresented groups in the mainstream of our society which has benefitted the entire nation. The extensive history of discrimination as well as current discrimination against women and people of color in education, as in other aspects of American society, continue to limit the current generation's educational opportunities. Until all vestiges of these inequities are eliminated, affirmative measures to level the educational playing field remain critical for women and people of color.

Background

For most of our nation's history, the doors of many of the nation's finest educational institutions were firmly closed to women and people of color. Racial and ethnic discrimination in federally-funded activities was outlawed with passage of Title VI of the 1964 Civil Right Act and gender discrimination prohibited with passage of Title IX of the Education Amendments of 1972. Nevertheless, educational opportunities for women and people of color are still limited by discrimination and stereotyping and affirmative action programs help level what remains a very tilted playing field.

Affirmative action in education spans a broad range of activities intended to make educational opportunities accessible to all Americans. Such activities include:

- providing targeted scholarships and other targeted financial aid;
- providing additional review of applications by admissions committees looking at other merit factors in addition to grades and test scores;
- making targeted recruitment efforts for undergraduate and graduate admissions, as well as for special educational programs; and,
- providing mentoring, counseling, and other support programs.

Affirmative Action In Education Has Expanded Opportunities For Women And People Of Color But The Need Remains

There is substantial evidence affirmative action programs have made a crucial difference for countless qualified individuals whose talents would not have surfaced without the opportunity provided by such programs. Discrimination and inequities continue to exist, and as a result, women and people of color continue to lag behind by many educational measures. For example:

<u>COLLEGE ENROLLMENT AND COMPLETION:</u>

♦ While growing numbers of students of color are attending college and universities, the gap in college participation and completion is cause for continuing concern. African Americans, Hispanics and American Indians continue to be much less likely to attend college than white youths.

- Approximately 18 percent of all college students are African American, Latino or American Indian compared with 28 percent of the college-aged population.
  Source: American Council on Education, *1994 Status Report on Minorities in Higher Education*, (1994) at 24.

- Only 33 percent of African-American and 36 percent of Hispanic high school graduates ages 18-24 attended college in 1993, compared with nearly 42 percent of whites.
  Source: Carter, D. and Wilson, R. (1995) "Thirteenth Annual Status Report on Minorities in Higher Education," American Council on Education, Washington, D.C.

- In 1994, the six-year college completion rate for American Indians was 34 percent compared with 36 percent for African Americans, 44 percent for Latinos, 58 percent for Whites and 64 percent for Asian Americans.
  Source: National Collegiate Athletic Association. (1990). (1993). (1994). NCAA Division I Graduation-Rates Reports

♦ The gender gap in higher education has narrowed but not disappeared. While women now comprise just over half of undergraduates nationwide, they remain excluded or underrepresented in key nontraditional areas of study, such as engineering, mathematics, and physical sciences. Many elementary and secondary schools systematically track girls away from these nontraditional courses.

- In 1994, women received only 11 percent of undergraduate engineering degrees, and less than 22 percent of math and physical sciences doctorate degrees.
  Source: U.S. Department of Education, Office of Educational Research and Improvement, Digest of Education Statistics 1996, at tables 279, 285, and 286.

- The rate of movement of women into nontraditional fields of study has been slow. The proportion of undergraduate degrees earned by women in the physical sciences increased between 1984-85 and 1993-1994 by only 5.5 percent, and women's share of engineering degrees increased by only 2 percent during the same period.
  Source: L. Knopp, Women in Higher Education Today: A Mid-1990's Profile, American Council on Education Research Brief (1995) at 4-5.

ADVANCED DEGREES:

♦ Women continue to be less likely to earn an advanced degrees than white men and people of color are less likely than both white men and women to earn advanced degrees.

- African Americans only received 4 percent of all U.S. doctorates compared with 3 percent that went to Latinos and Asian Americans, and less than one-half percent that were awarded to American Indians.
  Source: *Making the Case for Affirmative Action*, American Council on Education. June, 1996 at. 25.

- Women still receive only 38 percent of doctoral and 41 percent of all first-professional degrees.
  Source: U.S. Department of Education, Office of Educational Research and Improvement, Digest of Education Statistics 1996, at tables 261 and 267.

FACULTY:

♦ Women and people of color are still nowhere near achieving parity in faculty positions in higher education. They are concentrated in the lower ranks of faculty, and their salaries lag behind those of their white male counterparts. Indeed, most of the recent gains for women and people of color are among visiting staff and temporary lecturers, not full-time staff.

- Tenure rates among all college faculty increased slightly from 1981 to 1991, but the tenure rate for faculty of color decreased from 61 percent to 59 percent during this period. Hispanics showed the largest decline in tenure rates, from 65 percent in 1981 to 61 percent in 1991. In 1981, Blacks comprised 4.1 percent of college faculty. In 1991, they made up 4.7 percent. At this rate of progress, parity will be achieved in about 2070.
  Source: Carter, D. and Wilson, R. "Thirteenth Annual Status Report on Minorities in Higher Education," American Council on Education, (March, 1995). Reginald Wilson, "Affirmative Action Policies Have Helped Minorities, Women Progress," Higher Education & National Affairs, American Council on Education, September 25, 1995.

- Only 46 percent of all women faculty are tenured, compared to more than 70 percent of male faculty and women are only 15 percent of full professors and 12 percent of college presidents.
  Source: *Affirmative Action in Education*, American Association of University Women. August, 1995.

- Women were approximately one-third of all full- and part-time faculty employed by U.S. colleges and universities in 1992. By contrast, half of all lecturers were women and 41 percent of all female faculty were employed part-time, while only 29 percent of male faculty were part-time.
  Source: L. Knopp, Women in Higher Education Today: A Mid-1990's Profile, American Council on Education Research Brief (1995) at 7.

Eliminating Educational Barriers For Women And People Of Color Through Affirmative Action Has Produced Broader Benefits To Society As A Whole.

- Affirmative action programs have increased the number of women completing law and medical school. The larger presence of women in the criminal justice and health care systems, as in other occupations, has given consumers more choices. The greater availability of female doctors and lawyers results, in large part, from affirmative action programs at medical and law schools. The larger presence of women in these fields also has coincided with improved handling of domestic violence cases and an increased focus on research relating to breast cancer and other critical women's health issues.

- Affirmative action programs in medical schools have increased the number of physicians of color. Data suggests these physicians fill an important role in caring for poor people and members of minority groups. Black and Hispanic physicians locate their practices in areas with higher proportions of residents from underserved minority groups. In addition, they care for higher proportions of patients of their own race or ethnic groups and patients who are uninsured or are covered by Medicaid.
  Source: Komaromy *et al.*, "The Role of Black and Hispanic Physicians in Providing Health Care for Undeserved Populations," *The New England Journal of Medicine*, May 16, 1996, Vol. 332, No. 20, p. 1305.

What Would Happen If Affirmative Action Were Eliminated?

To eliminate the ability of admissions offices to take race into account to foster a diverse student body is to re-segregate public universities. The devastating effects of eliminating affirmative action are already being felt in two of the nation's largest public universities. In 1995, the University of California system's Board of Regents voted to drop affirmative action in admissions beginning with the next year's entering class. In Texas, a ruling by the U.S. Court of Appeals for the Fifth Circuit barred public colleges in that state from considering the race of prospective students. Consider:

- At the University of Texas School of Law, admissions of Hispanic students in fall 1997 were down 64% and admissions of African American students were down 88%. Also, nearly 400 fewer black and Hispanic students have been offered admission as undergraduates at the University of Texas--a 20 percent decline.

- Only 21 black students were selected by the University of California, Los Angeles, law school admission in fall 1997--an 80 percent drop from the previous year and the lowest number of African Americans offered admission since 1970. When the fall 1997 semester began at Boalt Law School in Berkeley, the 270 member entering class had only one black student.

- The latest figures for the University of California, Berkeley, undergraduate acceptances reveal a

devastating impact on admissions of people of color: admissions for the fall 1998 incoming class has dropped 66% for African Americans and 53% for Hispanics.

Every individual in the nation should be alarmed by these numbers and should oppose policies denying entire segments of our society the full range of opportunities that our country has to offer.

Why Admissions Policies Consider More Than Grades and Test Scores

Opponents of affirmative action often assert it is possible to rank all applicants on the basis of quantitative measures alone. College admissions counselors and committees understand merit consists of more than grades and test scores, which can correlate as much with family income and parental academic attainment, as with a student's ability to succeed. They know that narrowly defining qualifications by grades and test scores leads to the exclusion of otherwise talented musicians, artists, athletes, and other able individuals. Schools have a legitimate interest in striving for a diverse learning environment for students living in a pluralistic nation and competing in a global marketplace. A practical education encourages students to interact and work with people of diverse backgrounds.

What the Courts Have Said About Affirmative Action in the Education Context

In *Regents of the University of California v. Bakke* (1978), the Supreme Court, by a 5-4 vote, ruled the rigid admissions program in effect at the University's medical school at Davis violated Title VI of the Civil Rights Act of 1964 requiring non-discrimination in activities or programs receiving federal funds. Pursuant to the program, 16 out 100 spaces for entering students were reserved for 'minority' students. In striking down the University's affirmative action program, the Court also ruled, by a 5-4 vote, that race lawfully could be considered as one of the criteria of qualified candidates for admission to the medical school. Justice Powell's plurality opinion held that "race or ethnic background may be deemed a 'plus' in a particular applicant's file..." 438 U.S. 265 (1978) at 317.

In *Hopwood v. University of Texas School of Law* (1996), the U.S. Court of Appeals for the Fifth Circuit ruled that the University of Texas's Law School's affirmative action program violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. At issue was an admission's policy that compared 'minority' and 'non-minority' applicants separately. In its decision, the Fifth Circuit said the Supreme Court's ruling in *Bakke* (that race could be used as one of several factors in admission) was no longer valid. While the Supreme Court allowed the *Hopwood* ruling to stand, it did not affirm the decisive language of the ruling.

Summary

Education is so fundamental to virtually every aspect of social and economic opportunity in America. More than ever, educational achievement is linked to economic security and advancement for individuals as well as the nation as a whole. Schools bear the unique responsibility of preparing the future leaders of the country to effectively live and lead in a multi-cultural society. In an era when America's competitive advantage lies in its ability to leverage the diversity of its people, a diverse, educated nation is a stronger nation economically and otherwise. As we approach the 21st Century, our commitment to these programs is more important than ever.

If you have any questions or would like more information, please call Nancy Zirkin at (202) 785-7720, or Wade Henderson at (202) 466-3311.

April, 1998

The American Association of University Women

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

Affirmative Action: Myth vs. Reality

Myth: **Women don't need affirmative action any more.**

Reality: Though women have made gains in the last 30 years, they remain severely underrepresented in most nontraditional professional occupations as well as blue-collar trades. The U.S. Department of Labor's Glass Ceiling Commission Report (1995) states that while white men are only 43 percent of the Fortune 2000 work force, they hold 95 percent of the senior management jobs. In addition, women are only 8.6 percent of all engineers, less than one percent of carpenters, 23 percent of lawyers, 16 percent of police, and 3.7 percent of firefighters. White men are 33 percent of the U.S. population, but 65 percent of physicians, 71 percent of lawyers, 80 percent of tenured professors, and 94 percent of school superintendents.

Myth: *Under affirmative action, minorities and women receive preferences.*

Reality: Race, gender, and national origin are factors that can be considered when hiring or accepting qualified applicants. Hiring qualified women and minorities is similar to the preferences given to veterans in hiring and to children of alumni in college admissions. There are also other preferences used in selecting qualified candidates. For example, when private colleges and universities value geographic diversity on their campuses, an out-of-state student may be admitted before an in-state student. Some colleges and universities consider athletic abilities and/or evidence of leadership skills in addition to academic qualifications. Affirmative action does not require preferences, nor do women and minorities assume that they will be given preference.

Myth: *Affirmative action is really quotas.*

Reality: Affirmative action provides women and minorities with full educational and workplace opportunities. Under existing law, quotas are illegal. Federal contractors are required to establish goals and timetables, and to make a good faith effort to meet them. Race, national origin, and gender are among several factors to be considered, but relevant and valid job or educational qualifications are not to be compromised. Further, the U.S. Supreme Court has made clear that affirmative action programs are illegal if: (1) an unqualified person receives benefits over a qualified one; (2) numerical goals are so strict that the plan lacks reasonable flexibility; (3) the numerical goals bear no relationship to the available pool of qualified candidates and could therefore become quotas; or (4) the plan is not fixed in length.

Myth: *Affirmative action leads to reverse discrimination.*

Reality: Statistics show that affirmative action does not lead to reverse discrimination. Between 1987 and 1994, less than 2 percent of all discrimination cases filed at the Equal Employment Opportunities Commission (EEOC) were filed by white men. Further, a study conducted by Rutgers University and commissioned by the U.S. Department of Labor (1995) found that reverse discrimination is not a significant problem in employment and that a high proportion of claims brought by white men are without merit. Affirmative action provides the employer with the largest pool of qualified applicants from which to choose.

Myth: *Affirmative action programs that aid the economically disadvantaged-- needs-based programs-- are enough to address discrimination.*

Reality: Affirmative action based on need alone would fail to break down barriers that women and minorities experience in the workplace, especially at higher levels. The U.S. Department of Labor's Glass Ceiling Commission Report (1995) states that while white men are only 43 percent of the Fortune 2000 work force, they hold 95 percent of the senior management jobs. Women and minorities face discrimination as they climb the corporate ladder and bump up against the "glass ceiling." Affirmative action programs take positive, proactive steps to prevent discrimination at all levels of employment.

Myth: *Unqualified individuals are being hired and promoted for the sake of diversity/affirmative action.*

Reality: Affirmative action plans that compromise valid job or educational qualifications are illegal. Plans must be flexible, realistic, reviewable, and fair. The U.S. Supreme Court has found that there are at least two permissible bases for voluntary affirmative action by employers under Title VII, the Federal law that prohibits discrimination in employment on the basis or race, national origin, sex, or religion: (1) to remedy a clear and convincing history of past discrimination by the employer or union, and (2) to cure a manifest imbalance in the employer's work force. Thus, affirmative action programs are intended to hire the most qualified individuals, while achieving equal of opportunity for all.

Myth: *Affirmative action does not have a place in government contracts.*

Reality: Congress has, in a bipartisan fashion, created federal procurement programs to counter the effects of discrimination that have raised artificial barriers to forming, developing, and using businesses owned by disadvantaged individuals, including women and minorities. Only qualified businesses can participate in these procurement programs. Federal law establishes several overall, national goals to encourage broader participation in federal procurement: 20 percent for small businesses, 5 percent for small disadvantaged businesses, and 5 percent for women-owned businesses. The goals are flexible and reflect an aspiration, not a guarantee that they will be achieved. With these goals, women and minority-owned business have had expanded opportunity. From 1982 to 1991, the dollar volume of federal contracts increased by 200 percent to women-owned firms and 125 percent to minority-owned firms. However, these programs are still needed because while minorities own almost 9 percent of all businesses and women own 35 percent of all businesses, together minorities and women receive only about 8.8 percent of the over $200 billion in federal contract awards. Further, without these programs the share of contracts to women- and minority-owned businesses will fall drastically. For example, after the 1989 *Croson* decision invalidating the minority contracting program in Richmond, Virginia, the share of contracting dollars going to minority-owned firms in Richmond fell from 38.5 percent to 2.2 percent.

Myth: *Title VII alone is sufficient to address discrimination.*

Reality: Affirmative action means taking positive, proactive, and preemptive steps to root out discrimination, rather than waiting for after-the-fact litigation. Title VII addresses discrimination, but it does so only after an instance of discrimination has been claimed. Affirmative action policies can end discrimination in a far less costly and disruptive way than protracted litigation.

Myth: *Underrepresentation of minorities and women in the corporate world or other high-paying jobs is not due to discrimination.*

Reality: Discrimination is not the sole reason for the lack of women and minorities in the corporate world. However, we must deal with past and present discrimination. A study of the 1982 Stanford MBA graduating class found that in 1992, 16 percent of the men held CEO titles compared to 2 percent of the women. Twenty-three percent of these men had reached the level of corporate vice presidents, but only 10 percent of the women, while 15 percent of men served as directors, compared to 8 percent of the women. Barriers to employment and promotion still exist for women and minorities. Affirmative action opens the doors to opportunity and advancement.

Myth: *The gap between the earnings of men and women has closed significantly in recent years; therefore, affirmative action is no longer needed to achieve pay equity.*

Reality: In 1997, women earned only 74 percent of the wages earned by men. In 1993, the total amount of wages women lost due to pay inequity was nearly $100 billion. The average woman loses approximately $250,000 over a lifetime due to unequal pay practices. Much of this wage gap is due to the fact that women are still segregated into traditionally female-dominated jobs where wages are low. In 1993, 61 percent of all employed women worked in technical/sales, service, and administrative support/clerical positions, while only 28 percent of women worked in higher-paying managerial and professional fields. In 1996, women were only 8.4 percent of all engineers, less than 1 percent of auto mechanics and carpenters, and about one-quarter of doctors and lawyers. The pay gap exists even within the same occupation. In 86 occupations tracked by the U.S. Bureau of Labor Statistics, women earn 20 to 35 percent less than men. For example, female college professors earn 77.1 percent of male professors' wages. Women public relations specialists earn 76.7 percent of their male counterparts' wages. Women in securities and financial services earn 65.6 percent of men's wages.

Myth: *Most analyses that point to wage differentials between men and women do not take into account differences in hours worked and years of uninterrupted work experience between the sexes. Female earnings are depressed because women work, on average, fewer hours per week than men and have more interruptions in working lives than do men.*

Reality: The wage inequities most often cited are based on Department of Labor and Census Bureau data on year-round, full-time workers who have a permanent attachment to the work force. This data does not compare full-time male workers to part-time female workers, nor does it compare permanent workers to part-time and contingent workers.

To let your voice be heard on this issue, contact your members of Congress.

For more information, call 800/608-5286 or e-mail votered@mail.aauw.org.

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Affirmative Action in Higher Education: A Current Legal Overview

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Updated as of March 31, 1999

I. Introduction

Affirmative action continues to be a source of heated legal, political and social debate in 1998, with much of the attention focused on higher education. Ever since Justice Powell's opinion in the Supreme Court's 1978 ruling in Regents of the Univ. of California v. Bakke, 438 U.S. 265 (1978) stated that a university could take race into account as one among a number of factors in student admissions for the purpose of achieving student body diversity, affirmative action programs in student admissions and financial aid, as well as in faculty employment, have largely been based on diversity. In recent years, however, affirmative action programs--and the diversity rationale in particular--have been challenged in cases like Hopwood v. Texas, 78 F.3d 932 (5th Cir.), cert. denied, 116 S. Ct. 2580 (1996) (asserting, contrary to Justice Powell's opinion in Bakke, that diversity does not provide a compelling interest for race-conscious decisions in student admissions) and Piscataway v. Taxman, 91 F.3d 1547 (3d Cir. 1996), *cert. granted*, 117 S. Ct. 2506, *cert. dismissed*, 118 S. Ct. 595 (1997) (holding that diversity could not serve to justify a race-based decision in the context of teacher layoffs). The Supreme Court refused to review Hopwood--though the case is now back in a federal appellate court--and Piscataway was settled prior to argument in the Supreme Court. The Court also declined to review an appeals court decision upholding the validity of Proposition 209 in California, a state constitutional amendment which prohibits state and local agencies--including public colleges and universities--from using preferences based on race or gender. Coalition for Economic Equity, et al. v. Wilson, 122 F.3d 692 (9th Cir.), cert. denied, 118 S. Ct. 397 (1997).

The two major justifications for race-conscious affirmative action in higher education that have been recognized under the existing civil rights statutes are remedying the present effects of past discrimination and diversity. In recent decisions, courts have looked more carefully at the nature and weight of the evidence required to prove present effects of past discrimination, and have focused narrowly on an institution's ability to remedy effects of past discrimination within that institution only (as opposed to systemic or societal discrimination). As to diversity, courts have been looking for articulated evidence of the educational benefits of diversity, and for how those benefits are tied to the educational mission of colleges and universities. In order to address this concern, the American Association of University Professors (AAUP), American Council on Education (ACE), and other organizations are currently conducting a survey of faculty members at Research I universities around the country with regard to the educational benefits of faculty and student diversity from their perspective as frontline educators.

The Supreme Court has not issued an opinion on affirmative action in the higher education context since Bakke, and the settlement of Piscataway means that the Court will not issue any definitive guidance on these issues in the immediate future (although lower court cases are pending which could eventually be reviewed by the Supreme Court, as discussed below). Individual federal circuits and districts, however, have precedents in place such as Hopwood and Piscataway that have had a chilling effect on affirmative action programs in higher education throughout the country.

Legal challenges to affirmative action continue in a variety of contexts within higher education, creating confusion and uncertainty for colleges and universities throughout the country. The cases discussed below primarily involve cases brought in federal court, although other complaints related to affirmative action programs have been filed in state courts, as well as with the U.S. Department of Education's Office for Civil Rights (primarily involving student issues under Title VI of the 1964 Civil Rights Act), the U.S. Equal Employment Opportunity Commission (primarily involving employment issues under Title VII of the Civil Rights Act), and other federal and state agencies. Washington State voters passed an initiative banning race-conscious affirmative in the public sector (similar to California's Proposition 209) in November 1998, and similar legislation has been discussed in other states and at the federal level. In the meantime, statistics continue to show that members of many minority groups (especially African-Americans, Hispanics, and Native Americans) are underrepresented within student and faculty ranks throughout higher education, and significant barriers to equal access to higher education--such as disparities in elementary and secondary education opportunities based on the segregation of local school districts--remain.

II. Cases Regarding Student Recruitment, Admissions, and Financial Aid

Title VI of the 1964 Civil Rights Act applies to student recruitment, admissions, and financial aid programs. Some key factors in the review of such programs include the following:

(1) the use of separate procedures, tracks, criteria, or committees for white and minority students;
(2) the number and weight of criteria used in such decisions other than race;
(3) the availability of alternative, race-neutral criteria such as class and geography, and their likelihood of providing similar diversity; and
(4) the relationship of such programs to the stated educational mission of the institution, taking into account its service area and the relevant applicant pool.

The most important current cases include challenges to the procedures used at the University of Michigan for both its undergraduate and law school admissions, and at the University of Washington law school. The Bakke case remains the Supreme Court precedent applicable nationally on student admissions, although the Hopwood decision (suggesting that Justice Powell's opinion in Bakke, which found that diversity could serve as a compelling interest in higher education to justify the consideration of race in student admissions, is no longer good law) is now a precedent of arguable significance in the three states within the Fifth Circuit (Texas, Louisiana, and Mississippi). The state of Texas passed legislation, however, that permits students within the top 10% of their graduating class at all Texas high schools to be admitted to

the University of Texas system. In the wake of Proposition 209, California has also adopted a plan to accept the top 4% of high school seniors in the state to the University of California system.

The U.S. Department of Education has issued policy guidance setting forth the circumstances under which race-targeted financial aid is permissible under Title VI as interpreted by the federal government. See 59 *Fed. Reg.* 8756 (Feb. 23, 1994). This guidance has been reiterated in light of subsequent federal court decisions and has been interpreted by the Department's Office for Civil Rights (OCR) in a number of agency findings, including a decision stating that privately funded "minority scholarships" at Northern Virginia Community College were not justified under Title VI because the College failed to demonstrate that the scholarships were needed for recruitment and retention of minority students, and because the college was involved in the creation of a foundation to administer the scholarships. A race-targeted financial aid program founded to remedy discrimination has also been struck down by a federal court based on the nature and weight of the evidence offered to support it. See Podberesky v. Kirwan, 38 F.3d 147 (4th Cir. 1994), cert. denied, 115 S. Ct. 2001 (1995) (invalidating scholarship program for African-American students only in formerly *de jure* segregated state system of higher education).

Important current cases include the following:

A. University of Texas (Hopwood): In a ruling on damages, a federal district court recently ruled that the University of Texas School of Law could not use race as a factor in its admissions program for the purpose of diversity. That ruling has paved the way for a new appeal in this case, in which the Fifth Circuit had previously struck down a particular two-track admissions process in which minority and non-minority applicants were considered separately. In that ruling, the Fifth Circuit also stated that diversity could not serve as the basis to justify the consideration of race in student admissions, and asserted that Justice Powell's opinion to the contrary in the Supreme Court's 1978 Bakke decision was not binding precedent. In 1996 the Supreme Court declined to review that ruling, but two of the justices indicated at that time that the case was considered moot because the law school had already modified the two-track admissions system. A number of Fifth Circuit judges who had not served on the original panel in this case criticized the Fifth Circuit panel decision and urged review by the entire Fifth Circuit. For this next appeal, *en banc* review is being sought. Briefs for the appeal are due by the end of April 1999.

B. University of Texas (LeSage): In one of the first applications of the 1996 Hopwood decision discussed above, in October 1998 the Fifth Circuit revived a lawsuit charging that the University of Texas at Austin discriminated against white applicants to a doctoral program in counseling psychology. Francois LeSage charged that the University's entrance criteria discriminated in favor of black and Hispanic applicants, but in 1997 a federal district court judge ruled that his denial of admission had nothing to do with the University's affirmative-action policies at the time and dismissed the case. The Fifth Circuit subsequently ruled that the case should be reconsidered, holding that in a Title VI suit, the existence of an affirmative-action plan was evidence of discrimination against non-minority applicants "sufficient to automatically refute the university's legitimate and

undisputed non-discriminatory reasons for its admissions decisions." The state of Texas has filed a *cert.* petition asking the Supreme Court to review that decision, as well as a ruling by the appeals court that state universities are not protected from Title VI lawsuits under 11th Amendment immunity.

C. University of Michigan: In the fall of 1997, two class action lawsuits were filed by the Center for Individual Rights on behalf of white students denied admission to the University of Michigan's undergraduate and law school programs. The suits allege that the University utilizes different standardized test score/grade-point average standards for white and minority students, based on admissions grids obtained by a professor that allegedly demonstrate that higher combinations of test scores and grades are required of white applicants. The University countered that race is only one among a number of factors taken into account in its admissions processes. (It has since adopted new admissions guidelines that assign points to applicants for academic and non-academic factors, including race, instead of adding point fractions based on non-academic factors to a student's grade-point average. The University asserts that the new system maintains its commitment to affirmative action and was under development before the lawsuit. The Center for Individual Rights has faulted the new system for also making race too large a factor in admissions.)

Both suits would hold administrators involved in admissions decisions personally liable under a federal statute (42 U.S.C. §1983) which provides recourse against persons who violate a plaintiff's civil rights "under color of law." Officials enjoy qualified immunity under that law, however, if they base their decisions in good faith on "objectively reasonable reliance on existing law." Nevertheless, officials of Cuyahoga Community College in Ohio were held personally liable for damages in a lawsuit in which a federal court struck down a policy requiring that at least 10% of the total value of contracts at the College be awarded to minority-owned businesses. The officials contended that they were obligated under state law to adopt a set-aside policy that benefited minority businesses, but a federal judge held that recent U.S. Supreme Court rulings striking down minority set-asides in contracting were sufficiently clear to warrant liability.

The Michigan cases are important because the University of Michigan is a highly selective public institution in a state with no history of *de jure* segregation. Thus the state will have to rely on the diversity rationale in its defense rather than remedying discrimination. Furthermore, the state's efforts have been quite successful in increasing minority representation within its programs over the past decade or so. These class action cases are expected to go to trial in late 1999.

D. University of Washington: In March 1997, a white female student filed a lawsuit against the University of Washington claiming that she was denied entry to the University's law school for the 1994-95 academic year and that less qualified minority applicants were admitted over her. As in the Michigan cases, the plaintiff alleges that the University utilized different standards for white and minority applicants. The law school has stated that its admissions process used tiers based on grade-point averages and test scores. Applicants in the top tier were almost always offered admission; applications in the middle and lowest tier were subject to further review by the admissions committee.

The assistant dean also had discretion to admit some applicants from the lower tiers or to refer them to the admissions committee for further consideration.

In November 1998, voters approved a state initiative to ban race-conscious affirmative action in the public sector (Initiative 200). Shortly thereafter, the University announced that it was taking steps to suspend the consideration of race and gender in admissions. Statistics from March 1999 indicated that minority applications to the University of Washington Law School dropped 41% from a year ago.

A federal district court judge recently held that the passage of Initiative 200 made much of the case moot, including class-action claims seeking to declare the old admissions policy unconstitutional. He also held that the discrimination case should be decided based on principles enunciated in the Supreme Court's 1978 *Bakke* decision. The judge has allowed the plaintiffs to appeal these rulings to the Ninth Circuit Court of Appeals; accordingly, the trial will be delayed for several months.

E. University of California: In October 1997, an alumnus of the University of California at Berkeley's Boalt Hall Law School sued the University, claiming that the law school and the University purposely circumvented Proposition 209 (the state constitutional amendment prohibiting public institutions from using preferences based on race or gender). In November 1997, the Supreme Court declined to review a challenge to the constitutionality of Proposition 209, leaving intact an appeals court decision upholding this state constitutional amendment. The lawsuit specifically claims that University officials violated Proposition 209 by encouraging the alumni association to raise private funds to sponsor scholarships for minority and female students. Further, the suit claims that the alumni association is partly financed with state funds which are being used to create minority scholarships that the University cannot itself establish under Proposition 209.

In February 1999, a coalition of civil rights organizations in California filed a class action suit in federal court alleging that the admissions criteria and definition of merit used by the University of California at Berkeley disproportionately deny admission to qualified minority applicants, without adequate educational justification. The complaint cites, for example, the University's special consideration of advanced courses (which are less accessible in many minority-serving high schools) and "undue" reliance on standardized test scores.

F. University of Maryland School of Medicine: A complaint filed in May 1998 in a federal district court in Baltimore alleges that the University of Maryland School of Medicine discriminates against white applicants "by maintaining drastically lower standards for the admission of members of certain favored minority groups, especially blacks." Plaintiff Rob Farmer, who is currently a student at a medical school in the Netherlands Antilles, alleges that his grades, test scores, and other criteria used by the University in selecting entering students were far above the average of black students who were accepted for the class entering in September 1996 (for which he applied). Farmer had previously participated in an Advanced Premedical Development Program

offered by the University during the summer for students from a minority or disadvantaged background.

G. Oklahoma State Regents for Higher Education: In October 1998, a white male student at the University of Tulsa filed a class action suit against the Oklahoma State Regents for Higher Education in federal district court, challenging the legality of a scholarship program that sets different test-score requirements for members of different racial groups and for men and women. The Oklahoma Academic Scholars Program was set up by state law and provides scholarships to in-state students with high test scores.

Desegregation Context

As was true of Podberesky and Hopwood (in Maryland and Texas, respectively), a number of recent cases have involved challenges to a variety of affirmative action measures related to attempts to carry out longstanding mandates resulting from court and agency-ordered desegregation. In United States v. Fordice, 505 U.S. 717 (1992), the Supreme Court held that state systems of higher education have an affirmative obligation to eliminate the vestiges of discrimination within their systems. The litigation involving the Mississippi system of higher education addressed in Fordice is still ongoing. Note also the following cases:

H. University of Georgia: In March 1999, a federal district court judge dismissed a portion of a discrimination lawsuit in which four Georgia residents charged that policies at the state's three historically black, public universities have prevented "meaningful desegregation" of the state's higher education system. The plaintiffs had sought to eliminate the "racial identifiability" of campuses in the state system and the consideration of race in admissions, hiring, and other decisions. Other plaintiffs in the lawsuit have alleged that the University of Georgia's past and present admissions system was and continues to be racially discriminatory because it uses different admissions criteria for white and black applicants. In January 1999, the district court judge ruled that one white male applicant was illegally denied admission in 1995 (when the University used a now-abandoned dual system with separate consideration and criteria for students based on race), holding that the University's now-abandoned dual system (under which white and minority students were considered separately, with different criteria) was not a valid diversity-based program under *Bakke* principles. The court has yet to rule on the legality of the University's current admissions policy, under which race is one of several factors considered in admissions.

I. Alabama State University: In an effort to attract more white students to Alabama State University and Alabama A&M University, the state's two historically black institutions, a federal judge in 1995 ordered each institution to spend up to $1 million a year for ten years in new state funding on scholarships open exclusively to white students. In the 1996-97 school year, the university allegedly awarded 40% of its grant money to white students--enough to provide scholarships covering tuition, fees, room and board for nearly every white student on campus. In order to qualify, white students reputedly needed only a "C" average and a high-school equivalency. In the summer of 1997, a lawsuit was filed by the Center for Individual Rights on behalf of four Alabama

State students who were not white and thus ineligible to receive a portion of this $1 million scholarship fund. The lead plaintiff is a black graduate student who was denied funds from the white scholarship pool, and who claims that black students must meet higher standards in order to be eligible for grants. In August 1998, a federal judge ordered that the scholarship program complaint be merged with the state's broader college-desegregation case. The student who brought the complaint has appealed that ruling to the Eleventh Circuit. In part in response to the suit, Alabama State University has recently raised its eligibility standards for the scholarships for white students.

Federal Programs

J. National Science Foundation: A white male graduate student at Clemson University filed suit in federal court in Alexandria, Virginia against the National Science Foundation (NSF) for denying him a chance to apply for one of several hundred slots in its Minority Graduate Research Fellowship Program based on his race. The slots are reserved for members of groups traditionally underrepresented in science and engineering--blacks, Hispanics, Native Americans, and Pacific Islanders. The plaintiff's application for one of 2250 other slots in the program had previously been rejected. NSF contended that its mandate for the graduate fellowship program came directly from its founding mission to strengthen U.S. science and from more recent legislation ordering it to take steps to increase the number of minorities in science. The suit was settled in June 1998, and for the future NSF is developing a single new program of graduate fellowships that will make financial awards to institutions instead of to individual students.

A similar case was settled in favor of a white female plaintiff who challenged a federal summer science camp program at Texas A&M University. The program was sponsored by the National Institutes of Health (NIH) and the Department of Agriculture (USDA) and aimed at attracting more minorities into biomedicine and health careers. Under the December 11, 1997 settlement, NIH and USDA agreed to abandon all criteria based on race or ethnicity and to pay $25,000 in legal fees. A case against NSF involving a science camp at the same University was settled in 1996, and NSF has since changed the focus to disadvantaged students. The Center for Individual Rights has supported the plaintiffs in all of these cases.

These cases are important because they involve federally sponsored programs. Although the U.S. Constitution grants the Congress unique powers under the 14th Amendment to carry out the purposes of the Equal Protection Clause on a national basis, the U.S. Supreme Court ruled in 1995 that federal programs containing racial classifications will be subject to the same level of strict scrutiny as state and local programs. See Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097 (1995).

III. Cases Regarding Faculty Employment

Title VII of the 1964 Civil Rights Act applies to employment decisions (e.g., hiring, promotions, layoffs, etc.). Some critical factors used in analyzing race-conscious employment decisions include the following:

(1) the number and weight of criteria used other than race;
(2) the degree to which slots appear to be reserved as "quotas" for members of specific minority groups (which are generally illegal); and
(3) the burden placed on non-minorities by the particular type of decision (e.g., hiring v. layoffs).

A. University of Nevada at Reno: In the wake of the settlement of the Piscataway case, the Supreme Court declined to review another faculty employment case in which the Nevada Supreme Court upheld the University's right to consider race as a factor to diversify its faculty. The plaintiff had been a finalist for position in the sociology department in 1991, when the University instead hired an African-American and paid him more than the posted salary range. At that time, only 1% of the University's faculty members were black, and the University maintained a "minority bonus program" that allowed a department to hire an additional faculty member if it first hired a minority. One year later, the sociology department filled the additional slot created by the minority bonus program by hiring the plaintiff. She was offered $7,000 less per year than the black male when he was hired.

The white female plaintiff filed a suit claiming that the University violated the Equal Pay Act by paying her less than a comparably qualified male peer, and the Civil Rights Act by basing its hiring and pay decision on race. The Nevada Supreme Court overruled a jury verdict in favor of the white plaintiff, relying on Bakke to find that Nevada-Reno had a "compelling interest in fostering a culturally and ethnically diverse faculty. . . . A failure to attract minority faculty perpetuates the university's white enclave and further limits student exposure to multicultural diversity." University and Community College System of Nevada v. Farmer, 930 P.2d 730 (Nev. S. Ct. 1997), *cert. denied* (1998).

B. Columbia University: In December 1997, the U.S. Court of Appeals for the Second Circuit in New York reversed a lower court and ordered a jury trial to review charges that Columbia University discriminated against an instructor because he was not of Hispanic descent. Stern v. Trustees of Columbia Univ. in the City of New York, 131 F.3d 305 (2d Cir. 1997). The plaintiff, who had taught Spanish and Portuguese at Columbia since 1978 and even served as interim director of the University's Spanish language program for two years, was allegedly not seriously considered for the permanent directorship because he is a white male of Eastern European descent. The University claimed that though the plaintiff was a finalist for the position, it chose another candidate based on qualifications, not bias. The person who was hired is described in court papers as an American of Hispanic descent. The plaintiff alleges that this individual had not yet earned his Ph.D, had less teaching experience and had written less extensively than the plaintiff, and was not proficient in Portuguese. The search committee at Columbia asked each of three finalists (including these two) to teach "tryout" classes, and found that the candidate they selected "mesmerized" the class while the plaintiff's teaching was weak.

IV. Elementary and Secondary Education

The battle over affirmative action in the education arena is also being waged at the elementary and secondary school levels. As in higher education, many of the cases have arisen in states and school districts which have struggled for years with court-ordered desegregation. One of the most prominent cases concerns the prestigious Boston Latin School in Massachusetts. Prior to November 1996, Boston's public schools were committed to an affirmative action admissions program for minority students who applied to the city's top three public high schools: Boston Latin, Latin Academy, and the O'Bryant School of Science and Mathematics. The policy required the schools to give 35% of their slots to black or Hispanic students. In 1996, a white student who was denied admission to Boston Latin filed a discrimination lawsuit in federal court. The school chose to drop its minority admissions program, and the suit was dismissed. Under a restructured admissions plan, the three schools admitted 50% of applicants based solely on test scores and grade-point averages, and the remaining 50% in proportion to their racial group in the applicant pool. A second white student filed suit in response to this new policy, and a federal appellate court ruled in November 1998 that the policy amounted to "racial balancing" and that diversity in and of itself does not constitute a compelling government interest (although it explicitly recognized that some iterations of diversity might be found to be compelling). The School has decided not to appeal the decision to the Supreme Court and has changed its admissions criteria.

Other school districts which recently have been or currently are parties to discrimination lawsuits include (among others) Houston, Texas; Arlington County, Virginia; Los Angeles, California; Montgomery and Prince George's Counties, Maryland; and Buffalo, New York. Finally, a number of states are addressing the issue of financing of K-12 public education in the wake of challenges to state reliance on property taxes, which result in great disparities based on class differences among local jurisdictions.

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* This overview is intended for background informational purposes and is not exhaustive. New developments and cases continue to arise. If readers are aware of pertinent new information and would like to share it, please contact us. Thank you.

The Major Affirmative Action Cases: A Digest of the Record

President Kennedy first used the term "affirmative action" in a 1961 civil rights speech, but the concept goes back to 1941, when President Roosevelt issued an executive order that barred defense contractors from discriminating against minorities. President Johnson issued Executive Order 11246 in 1965, ordering federal contractors to boost their number of minority employees. In his famous Great Society Speech, Johnson stated, *"You do not take a person who for years has been hobbled by chains, and liberate him, bring him up to the starting line, and then say, 'You are free to compete with all the others.'"*

The Supreme Court has determined the scope and meaning of affirmative action. These are the Court's key rulings:

Griggs v. Duke Power Co. (1971) prohibited employment practices that have a discriminatory impact, as well as those intended to discriminate.

Runyon v. McCrary (1976) said a 19th Century civil rights law barred racial discrimination by private parties.

Regents of the University of California v. Bakke (1978), probably the most controversial case of the 1970s, invalidated a medical school admissions plan, but permitted minority preferences.

United Steelworkers of America v. Weber (1979) upheld Kaiser Chemical Corp.'s affirmative action plan giving 50 percent of skilled jobs to blacks until black employment at the plant reflected population figures.

Fullilove v. Klutznick (1980) rejected a challenge by contractors to a federal requirement that 10 percent of the work on federal projects must go to minority firms.

Bob Jones University v. United States (1983) ruled that a university must have a racially nondiscriminatory policy with respect to students in order to maintain their tax-exempt status.

Firefighters Local Union No. 1784 v. Stotts (1984) struck down a consent decree terminating employment of some whites in order to increase the number of minority workers.

Local 28 Sheet Metal Workers v. Equal Employment Opportunity Commission (1986) upheld a court order imposing a goal for nonwhite union membership in light of the union's "pervasive and egregious discrimination."

Local No. 93 International Association of Firefighters AFL-CIO v. Cleveland (1986) held that a federal court could enforce a voluntary agreement to give minorities preference in hiring and promotion. The court said that under Title VII of the Civil Rights Act of 1964, a voluntary public sector affirmative action plan is valid when contained in a consent decree.

Wygant v. Jackson (MI) Board of Education (1986) struck down a labor agreement because it allowed for layoffs of white teachers before minority group teachers with less seniority.

Johnson v. Transportation Agency of Santa Clara, CA (1987) permitted gender to be a factor when considering promotions.

United States v. Paradise (1987). The Supreme Court ruled in a case involving the Alabama Department of Public Safety that judges may order employers to use numerical racial quotas in promotions as well as in hiring, to cure "egregious" past discrimination against blacks.

City of Richmond v. J. A. Croson Co. (1989) disallowed the city's set-aside plan requiring that 30 percent of subcontracts go to minority-owned firms.

Martin v. Wilks (1989), a case involving the Birmingham (AL) fire department, made it easier to challenge settlements establishing affirmative action plans.

Wards Cove Packing Co. v. Antonio (1989) imposed tougher standards on employees trying to prove discrimination through the use of statistics.

Patterson v. McClean Union (1989) affirmed an earlier ruling prohibiting discrimination in the private sector, but also held that a Reconstruction Era Law does not ban racial harassment in the workplace.

Metro Broadcasting, Inc. v. Federal Communications Commission (1990) upheld minority broadcast licensing preferences because they promoted the objective of broadcast diversity.

United States v. Fordice (1992) ruled that the adoption of race-neutral policies alone does not fulfill a state's affirmative obligation to disestablish a prior *de jure* segregated university system.

Adarand Constructors v. Peña (1995) held that racial classifications established by Congress must be analyzed under the strict scrutiny standard that applies to state and local governments, and the remedy must be narrowly tailored.

Major Civil Rights and Equal Employment Opportunity Legislation Since 1963

Equal Pay Act of 1963 gives men and women the right to earn equal pay for doing substantially the same work. Employers found guilty of "willful" discrimination may have to pay double or triple damages.

Civil Rights Act of 1964 covers many subjects, including public accommodations and services. As amended in 1972, 1978, and 1991, this law prohibits all forms of discrimination on the basis of race, color, gender, religion, or national origin. Title VII specifically prohibits discrimination in employment and applies to all public and private employers with 15 or more employees, as well as to labor organizations and employment agencies.

Age Discrimination in Employment Act of 1967 protects persons over 40 from discrimination on the basis of age in any conditions of employment.

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex against students and employees of education agencies and institutions receiving federal funds.

Rehabilitation Act of 1973. Section 503 of this Act covers most employers with federal contracts and subcontracts in excess of $2,500. It prohibits discrimination against any qualified employee or applicant because of a physical or mental disability, and requires federal contractors to take affirmative action. Section 504 prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance.

Vietnam Era Veterans Readjustment Act of 1974 requires employers with federal contracts to take affirmative steps to employ and advance in employment qualified disabled veterans and Vietnam Era veterans.

Age Discrimination Act of 1975 bars employers who receive federal financial assistance from discriminating on the basis of age. This law, unlike the ADEA, does not have a minimum age requirement.

Immigration Reform and Control Act of 1986 requires employers to verify that potential employees are not aliens unauthorized to work in the United States and prohibits an employer with four or more employees from discriminating against any individual in hiring or discharge because of national origin or citizenship status.

Americans with Disabilities Act of 1990 provides a clear mandate to end discrimination, provide enforceable standards, and bring persons with disabilities into the social and economic mainstream. The ADA prohibits discrimination against qualified people with disabilities in employment, public services, transportation, public accommodations, and telecommunications.

Civil Rights Act of 1991 amends various federal discrimination laws and overrules several interpretations of these laws previously made by the Supreme Court.

Implications for Higher Education

Admission and Retention

For higher education, the most sensitive issue regarding affirmative action is that of student admission to and retention in selective undergraduate, graduate, and professional programs. The best defenses of affirmative action approaches are those that speak to the process of selecting a limited number of students from a quantitatively defined and qualified pool. It is argued that in such cases, virtually everyone in the pool is qualified, and thus the issue should not be defined as the qualified versus the unqualified, but as the more or less qualified. At this point, the issue of quantitative measures to differentiate among qualified applicants must be addressed.

Opponents of affirmative action often assert that it is possible to rank all applicants on the basis of quantitative measures alone, whereas proponents believe that quantitative measures represent only one aspect of ranking applicants. For example, few studies show that student learning outcomes, such as success in postgraduate employment, correlate positively with initial quantitative test scores or grade point averages. Admittedly, the state of the art in measuring student learning outcomes still is not sophisticated. But, as Michael Kinsley has observed, it simply is not possible to rank the American population from one to 250 million, and the same is true for student applicant pools. Admissions officers and committees have devoted careers to careful screening that combines quantitative and nonquantitative factors to get "the best class." Before the use of affirmative action, the admission process was an agonizing exercise that left well-intentioned people uneasy. Counting "legacies" or athletic prowess as "plus factors" has a long and largely honorable tradition. A law professor at a recent meeting of legal scholars suggested that, in the case of underrepresented minorities, one could simply define "legacies" to include those whose legacy is a family background of discrimination.

Proponents of multiple criteria for college admission need to defend such policies based on their educational currency. Those educational benefits obviously can include the need to remedy the vestiges of past discrimination. Equally important, the achievement of diversity in a student body can be set forth as an educationally and legally valid objective.

The 1978 *Bakke* case, upholding the use of race as a "plus factor" in UC Davis Medical School admissions decisions, has provided institutions and the courts with a benchmark characterized as allowing race-conscious admissions decisions if they are predicated on either remedying present effects of past discrimination or fostering student diversity. *Bakke* specifically does not permit quotas or set-asides.

Institutions thus should be prepared to defend their affirmative action admissions policies in terms of the educational rather than the societal purposes being served. Many college presidents have eloquently asserted that all students receive a better education because of their affirmative action policies.

Student Financial Aid

For many years following the ***Civil Rights Act of 1964***, the Department of Education permitted institutions to take race into account to a greater extent in financial aid awards than in admissions, as long as minority-targeted aid represented a small part of the overall aid program. In 1990, the Bush administration abruptly changed course and said that race at most could be used only as a "plus factor" in decisions concerning financial aid awards. The predominant sentiment in the higher education community was that race-neutral financial aid programs would not address the pipeline problem in graduate and professional education satisfactorily, and that some limited racial targeting was defensible at the undergraduate level. The Bush administration left office without issuing final guidelines on minority-targeted student financial aid. After hearing from ACE and other associations in defense of minority-targeted aid programs, the Clinton administration returned to the more permissive pre-1990 policies.

The *Podberesky* case was filed by a student at the University of Maryland who was denied access to a scholarship because he was not African American. This case involving race-exclusive scholarships was decided against the University at the appeals court level, and the Supreme Court was asked to grant *certiorari*. ACE filed four *amicus* briefs at various stages of this case in support of the University's position. In May 1995, the Supreme Court declined to hear the case; therefore, the ruling of the lower court stands and a settlement with the student has been made. While minority-targeted aid programs intended to foster diversity are widespread, surveys conducted by both ACE and the General Accounting Office indicate that they involve only a small share of aid dollars and most often are not race-exclusive.

Employment

While the legal issues surrounding affirmative action in admissions and financial aid are unique to higher education, the regulations concerning affirmative action in employment apply to colleges and universities just as to other federal contractors. The principal regulatory instrument is Executive Order 11246, issued by President Johnson in 1965, which requires that contractors take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to race, color, religion, or national origin. (This order subsequently was amended by four additional orders, with Executive Order 11375 adding "sex" to the protected classes in 1967.)

The term "affirmative action" is not defined in the Executive Order, nor does the order suggest that the term was intended to be synonymous with racial or gender preferences. This order is enforced by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor, which, among other things, calls for annual reports to include goals and timetables for achieving a work force consistent with the employment pool from which the employer draws. Over the years, arguments have persisted over the definitions of "under-utilization" of women and minorities and the "available pool" from which employers draw their employees.

Higher education is challenged to demonstrate how essential diversity and inclusiveness are to our campuses and to a future educated populace, and to spread the word that these goals cannot be achieved without the continued use of affirmative action programs. Laws and court decisions must be followed; thus, it is our duty to ensure that lawmakers and judges understand the implications of any effort to undermine current policies and practices.

Two memoranda from the Department of Education, included on the following pages, contain policy guidance for colleges and universities. The first (July 30, 1996) advised campuses that, except in the Fifth Circuit, race could still be used in making admissions decisions and granting financial aid. The second document (September 7, 1995) concerned race-targeted student financial assistance as it related to the *Podberesky* and *Adarand* decisions.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

July 30, 1996 THE GENERAL COUNSEL

Dear College and University Counsel:

I am writing to reaffirm the Department of Education's position that, under the Constitution and Title VI of the Civil Rights Act of 1964, it is permissible in appropriate circumstances for colleges and universities to consider race in making admissions decisions and granting financial aid. They may do so to promote diversity of their student body, consistent with Justice Powell's landmark opinion in Regents of the University of California v. Bakke, 438 U.S. 265, 311-315 (1978). See also Wygant v. Jackson Bd. of Education, 476 U.S. 267, 286 (1986) (O'Connor, J., concurring). They also may do so to remedy the continuing effects of discrimination by the institution itself or within the state or local educational system as a whole.[1]

The Department's position is reflected in its published regulations and its guidances on the application of Bakke, race-targeted financial assistance, and desegregation of institutions of higher education.[2] That position has not changed as a result of the Fifth Circuit's decision earlier this year in the Hopwood case or the Supreme Court's recent determination not to grant certiorari to review the Fifth Circuit's decision. Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996), cert. denied, Texas v. Hopwood, No. 95-1773 (July 1, 1996).

In denying certiorari, the Supreme Court neither affirmed nor reversed the Fifth Circuit panel's decision in Hopwood, which took the position that the University of Texas Law School could not take race into account in admissions either to promote diversity or to remedy the effects of the State's formerly

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[1] City of Richmond v. J.A. Croson Co., 488 U.S. 469, 491-92 (1989); United States v. Fordice, 505 U.S. 717, 732 n.7 (1992).

[2] 34 CFR Part 100; Race-targeted Financial Aid Notice, 59 Federal Register 8756 (Feb. 23, 1994); Fordice Notice, 59 Federal Register 4271 (Jan. 31, 1994); Bakke Notice, 44 Federal Register 58509 (Oct. 10, 1979); Sept. 7, 1995 letter from Judith Winston, General Counsel, United States Department of Education, to College and University Counsel regarding the Supreme Court's denial of certiorari in Podberesky v. Kirwin, 38 F.3d 147 (4th Cir. 1994) and its decision in Adarand Constructors v. Pena, 115 S. Ct 2097 (1995); Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education, 43 Federal Register 6658 (Feb. 12, 1978).

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segregated system of public education, but could only seek to remedy the Law School's own discrimination. The denial of certiorari does not mean that the Supreme Court departed from Justice Powell's opinion in Bakke that a college or university has a compelling interest in taking race into account in a properly devised admissions program to achieve a diverse student body. Nor does it mean that the Supreme Court accepts the Fifth Circuit's narrow view of the permissible remedial predicate justifying the consideration of race by institutions of higher education.

Consequently, the Department continues to believe that, outside of the Fifth Circuit, it is permissible for an educational institution to consider race in a narrowly tailored manner in either its admissions program or its financial aid program in order to achieve a diverse student body or to remedy the effects of past discrimination in education systems. Within the Fifth Circuit, the law is unclear after the panel's decision in Hopwood.[3] Given this uncertainty, the Department will await further proceedings in the case, which is now on remand from the panel decision, or subsequent rulings in other cases before determining whether further guidance is necessary.

The Department's Office of Civil Rights will continue to provide technical assistance to institutions in their efforts to develop programs that comply with Title VI of the Civil Rights Act of 1964.

Sincerely,

Judith A. Winston

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[3] See Texas v. Hopwood, No. 95-1773 (July 1, 1996) (opinion of Ginsburg, J. joined by Souter, J.); Whittmer v. Howard A. Peters III, 1996 WL 363399, 2-3 (7th Cir. 1996); Hopwood v. State of Texas, 84 F.3d 720, 722-24 (5th Cir. 1996) (Politz, King, Wiener, Benavides, Stewart, Parker and Dennis, JJ., dissenting), 724-25 (Stewart, J., dissenting).

UNITED STATES DEPARTMENT OF EDUCATION

~~OFFICE~~ OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

September 7, 1995

Dear College and University Counsel:

I am writing to confirm that the Department of Education's policy guidance on race-targeted student financial aid has not changed as a result of either the Supreme Court's recent decision not to hear the appeal requested by the University of Maryland in the Podberesky v. Kirwan[1] case or the Supreme Court's decision in Adarand Constructors v. Pena.[2] A copy of our policy guidance is enclosed.

Podberesky Case

In Podberesky, by denying the University's request, the Supreme Court neither ruled against race-targeted scholarships generally, nor affirmed the Fourth Circuit's decision that the University had not submitted sufficient evidence to justify providing such aid. The Supreme Court simply decided not to hear the appeal.

It is important for you to know -- especially in light of some erroneous news reports -- that the Fourth Circuit did not rule that all race-targeted scholarships are impermissible. The Fourth Circuit followed established Supreme Court precedent, as does Principle 3 of the Department's policy, by holding that colleges may establish race-targeted scholarships to remedy the present effects of prior discrimination, provided that such measures are "narrowly tailored" to achieve that objective. The Fourth Circuit did rule -- contrary to the arguments made on behalf of the University by the United States Government in an amicus brief in the case -- that it is not permissible for a college to rely on a poor reputation in the minority community to show that the effects of prior discrimination are continuing. Similarly, a racially hostile environment was held not to be a present effect of a college's past discrimination unless the college shows that this environment was caused by its own past actions and is not the result of general societal discrimination. The Fourth Circuit also ruled that the University's scholarship program was not "narrowly tailored" to cure the present effects of the University's previous discrimination. It found that the University had not convincingly established the composition of its applicant pool and, therefore, the court could not determine whether there was an under representation of African-American students or any need for narrowly tailored remedial action. The court also concluded that, even if there existed a need for remedial action, the scholarship program was not narrowly tailored because its eligibility criteria included students who, in the court's view, were not the type of students subjected to the University's past discrimination.

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[1] 38 F.3d 147 (4th Cir. 1994), cert. den., 115 S. Ct. 2001 (1995).

[2] 115 S. Ct. 2097 (1995).

In short, the Fourth Circuit's decision was limited to ruling on the nature and weight of the University's factual evidence and the extent to which it met the "narrowly tailored remedy" legal standard established by the Supreme Court in numerous precedents. While we disagree with the result in Podberesky, the decision does not require the Department to modify its policy guidance on remedial race-targeted scholarships. Of course, in applying that guidance, we will follow the evidentiary standards articulated by the Fourth Circuit in Podberesky in states that are subject to the ruling -- Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Finally, the Fourth Circuit's decision in Podberesky did not address the validity of race-targeted scholarships that are consistent with Principle 4 of the Department's policy guidance, which states that a college may consider race as a factor or a condition of eligibility in awarding scholarships in order to promote the racial diversity of its student body, as long as such action complies with the narrow tailoring requirement set forth in Principle 4.

Adarand Case

In the Adarand case, where a federal affirmative action program for the construction industry was challenged, the Supreme Court held that racial classifications established by Congress must be analyzed by a reviewing court under the same strict scrutiny standard that applies to racial classifications established by state or local governments. Such classifications must be narrowly tailored to serve a compelling governmental interest. The Department's policy under Principle 2 states that race-targeted financial aid authorized by Congress would not violate Title VI of the Civil Rights Act. The Supreme Court's decision in Adarand did not change this principle, but it did rule that a strict scrutiny standard must be used by the Federal courts in reviewing any constitutional challenges to Congressionally authorized race-based programs.

The Department of Justice is coordinating a review of federal programs under the strict scrutiny standards made applicable by Adarand. If it is determined that a particular race-targeted financial aid program authorized by Congress does not meet these standards, action will be taken to make appropriate changes in that program. I want to stress, in any event, that Adarand reaffirmed that remedying the effects of past discrimination is a compelling governmental interest that can justify the use of narrowly tailored raced-based measures. Furthermore, Adarand does not foreclose the use of such measures to promote diversity in higher education under Principle 4 of the Department's policy guidance.

Summary

In conclusion, under governing legal standards, race-targeted student aid is legal in appropriate circumstances as a remedy for past discrimination or as a tool to achieve a diverse student body. Scholarships for these purposes are vital to the education of all students.

The Department will continue to implement its financial aid policy under Title VI of the Civil Rights Act and to support race-targeted aid programs that are consistent with our policy. The Department's Office for Civil Rights is continuing to provide technical assistance to institutions in their efforts to develop financial aid programs that comply with the policy and with applicable federal court decisions.

Sincerely,

Judith A. Winston

Enclosure

What You Can Do

- **University/College Change of Opinion**
  - **Make an Analysis of the Climate for Affirmative Action on Your Campus**
  - **Tell the Story**
  - **Design the Strategy**
  - **Congressional Action**
    - **Visiting Your Representative**
    - **Letter-Writing Campaigns**
    - **Phone Calls to Congress**
  - **State Legislation**
- **Sample Letter to Congress**
- **Sample Letter to the Editor**
- **Join Our Effort — Network Form**

University/ College Change of Opinion

Who would have thought that the governing board of one of the most multicultural universities in the most multicultural state in the country would have taken a step away from diversity? In July 1995, the University of California Board of Regents decided to end affirmative action in admissions, hiring, and contracting at the state level. While the university remains under federal affirmative action requirements regarding employment, there has been great concern about the decline in minority student enrollment throughout the University since this ban took effect in January 1997.

How can you ensure that the public policy makers at your institutions recognize that diversity among students, faculty, and staff is an essential component of a high-quality higher education? The following commentary offers some ideas:

Make an Analysis of the Climate for Affirmative Action on Your Campus

- You are a member of a campus community, and as a supporter of cultural diversity, you are in the best position to measure your institution's attitude about affirmative action. Reading the campus newspaper, faculty newsletters, board of trustees minutes, and alumni magazines will give you additional information. Forming coalitions with other people and groups that support affirmative action and actively sharing information about the campus climate also are effective. In essence, you will be conducting your own personal environmental scan in order to gauge the level of support on campus for affirmative action. If possible, see if there are differences of opinion among students, administrators, faculty, and staff. Incorporate this information into your analysis. While it may be more difficult to obtain board and alumni opinions, both are key to your overall assessment of campus attitudes toward affirmative action. Use this information as you decide on next steps, and remember that opinions can change quickly.

Tell the Story

- Be prepared to "tell the story" of how affirmative action has helped your campus improve its diversity. This story should include facts, such as the increased number of students, faculty, and staff who are women and/or members of minority groups, and accounts of individuals whose lives have been enhanced by the use of affirmative action. Include information on how diversity in higher education helps prepare your students for the world of work and for participation in a democratic society. It is very important to put this debate about affirmative action into the context of your institution.

Design the Strategy

- With a good idea of campus opinion established and the story of affirmative action at your institution prepared, it is now time to design your strategy. If support for affirmative action is strong, then organizing a media effort that celebrates the achievements of affirmative action might be most appropriate. If, on the other hand, you find evidence that key policy makers are wavering in their support, then it is essential that they hear from both the current campus community and the alumni. Individual meetings with these key policy makers can be very effective.

Congressional Action

We urge you to express your strong opposition to any national legislation designed to curtail or eliminate affirmative action. Contact your senators and representatives and encourage them to vote against such measures. The critics of affirmative action are using your silence as further evidence that the nation no longer needs or wants affirmative action. Your opinion matters and it must be heard.
Support greater opportunity for women and minorities —call or write TODAY.

Visiting Your Representatives

A visit with a member of Congress works both ways. Any time you travel to Washington, DC, be sure to schedule a meeting with your member of Congress or the staff members responsible for higher education issues. Members often have more time for constituents during congressional recesses, when they visit their district office(s). Maintaining a steady dialogue with them—even when there are no pending votes—will benefit your campus in the long run.

Make an appointment

Call your member's Washington or district office and ask to speak with the scheduler. Explain that you are a concerned citizen and want to meet with your representative to talk about affirmative action. If the representative is not available, make an appointment with the legislative assistant who covers education matters. They understand the issues you are addressing and will make sure your message gets to the member.

Be prepared

Go into the meeting with specific information and examples of how affirmative action programs affect you and the people of the member's state and/or district. Provide a fact sheet of examples of how affirmative action has enhanced your campus.

Be brief

Respect the busy schedules of representatives and their staffs. A typical appointment is about 20 minutes; do not overstay your allotted time.

Follow up

After your meeting, write a note to the representative and the aides with whom you met. Thank them for their time and reiterate why affirmative action is so important to you and your campus.

Letter-Writing Campaigns

The most effective way to contact your member of Congress is to write a letter. Along with phone calls, personal letters command the greatest amount of attention in congressional offices. Letters should be brief, concise, and neat. State your message clearly at the start of your letter ("I'm contacting you because I want you to vote for the continued use of affirmative action.") Then give the details of your personal story. Keep it short and don't forget to provide your return address.

How to Address Members of Congress

The Honorable (name) U.S. House of Representatives Washington, DC 20515	The Honorable (name) U.S. Senate Washington, DC 20510
Dear Representative (last name):	Dear Senator (last name):

Phone Calls to Congress

Phone calls may be the easiest way to get your point across to members of Congress. When you call a congressional office, you seldom will speak directly with your member. Instead, you will be leaving a message with a staff member—usually the legislative assistant responsible for briefing your representative on education issues. Keep your message brief, and don't forget to personalize the story.

Any member of Congress can be reached through the Capitol Switchboard (below) by asking for your representative's office.

U.S. Senate Switchboard	(202) 224-3121
U.S. House of Representatives Switchboard	(202) 225-3121
White House Comment Line	(202) 456-1111

For the local numbers of district offices, check your local phone directory.

State Legislation

In dealing with state legislators, follow an approach similar to your interactions with your congressional representatives. An effective strategy is to be **proactive**.

Tips for Effective Advocacy

- Communicate with your legislators and express your support for affirmative action.
- Be prepared to provide personal stories of how affirmative action has enhanced your academic career and/or data that illustrate how affirmative action has improved the diversity of your campus.
- Discuss the educational value of diversity and the benefits of a campus that mirrors the community. Read the 1995 and 1997 ACE Board of Directors statements on affirmative action, and use this information in making your arguments. **(See "ACE" section of this handbook.)**

- Make clear your belief that affirmative action has provided the means to achieve diversity.

- Form a network with other campus-based professionals in your state who support affirmative action. Share information and consider calling on legislators together.

- Seek out organizations in your state that support affirmative action. Form alliances with grassroots groups and affiliates of national organizations, many of which already have efforts under way.

On a more positive note, proposals have been introduced in several states that would strengthen or expand affirmative action programs. Some examples are Florida, Hawaii, Illinois, New York, and Oregon. If you are in one of these states, be sure to thank your legislators for their continued support of affirmative action.

A SAMPLE LETTER TO CONGRESS TO SAVE AFFIRMATIVE ACTION

(If national legislation is introduced to curtail or eliminate affirmative action.)

Dear _____:

As a member of the academic community of _____, I urge you to support affirmative action and vote against _____. We all want a color- and gender-blind society, but we know that serious discrimination still persists today. As long as discrimination based on race and gender continues to exist, we must fashion remedies that take race and gender into account.

It is essential that affirmative action be preserved for the following reasons:

- Diversity serves an important educational function.
- Diversity in higher education helps prepare students for the world of work and for participation in a democratic society.
- Affirmative action helps guarantee equal employment opportunity in colleges and universities and enhances quality in higher education.

Literally millions of men and women have been given equal opportunity in employment, education, housing, and voting because of affirmative action.

In my own case, affirmative action is important to me because:

_____

_____

_____

Affirmative action has never been about "quotas," but about providing opportunities and access. Please continue to support affirmative action.

Sincerely,

Name:
Address:

SAMPLE LETTER TO THE EDITOR

Dear _____:

I am writing to express my support for affirmative action, particularly in institutions of higher education. We all want a color- and gender-blind society, but we know that serious discrimination still persists. As long as discrimination based on race and gender continues to exist, we must fashion remedies that take race and gender into account. Affirmative action must be preserved because it means taking positive, proactive, and pre-emptive steps to root out discrimination.

We in higher education support affirmative action because we believe that diversity serves an important educational function by exposing students to individuals of different backgrounds and to a variety of disciplines, cultures, and points of view. Diversity in higher education helps prepare students for the world of work and for participation in a democratic society. Affirmative action helps guarantee equal employment opportunity in colleges and universities and enhances quality in higher education.

In my own case:

[Insert personal details, for example, a success story on how affirmative action has benefited you, your career, your college, your business, or your community.] _____

In representing the public's opinion, I hope your publication will include those of us who believe that affirmative action is essential to wipe out discrimination and ensure equal opportunity.

Sincerely,

Name:
Address:

MAKING THE CASE FOR AFFIRMATIVE ACTION IN HIGHER EDUCATION NETWORK

American Council on Education
One Dupont Circle
Washington, DC 20036

I would like to be part of a network to make the case for affirmative action.

Name: _____

Mailing Address: _____

_____

E-Mail Address: _____

Phone Number: _____ Fax Number: _____

I am willing to engage in the following activities (please check):

____ Provide updates on the activities and strategies that my campus is using to support affirmative action.

____ Establish a campus group concerned with making the case for affirmative action, or if there already is a group working on these issues, establish a contact for ACE with that group.

____ Seek out success stories regarding the accomplishments of affirmative action on my campus, seek permission to share them with the ACE, and write them up for publication.

____ Be part of an alert network that would receive broadcast messages from ACE, share the messages with campus and community colleagues, and respond to appropriate agencies.

____ Monitor any state legislation regarding affirmative action, and report the results to my campus and to ACE.

____ Other (please specify): _____

Please mail to Diane Hampton at the above address. Thank you for your support.

ACE and Affirmative Action

- **About ACE**
- **ACE Contacts**
- **ACE and Affirmative Action: A Brief History**
- **ACE Board Statements on Affirmative Action and Diversity**
- **The Need to Act is Reinforced: An ACE Survey**

WHAT IS ACE?

The **American Council on Education** (ACE), founded in 1918, is the umbrella association for the nation's colleges and universities. ACE is dedicated to the belief that equal educational opportunity and a strong higher education system are essential cornerstones of democratic society. ACE's approximately 1,800 members include accredited, degree-granting colleges and universities from all sectors of higher education and other education organizations. ACE provides a forum for discussion of major issues relating to higher education and its potential to contribute to the quality of American life. ACE maintains both a domestic and an international agenda and seeks to advance the interests and goals of higher and adult education in a changing environment by providing leadership and advocacy on important issues, representing the views of the higher and adult education community to policy makers, and offering services to its members.

ACE World Wide Web Home Page

Current information on ACE activities on affirmative action—letters to Congress, public statements, etc.—can be found on ACE's home page on the World Wide Web (http://www.acenet.edu).

The home page also contains the most recent version (February 1998) of ***Making the Case for Affirmative Action in Higher Education*** (http://www.acenet.edu/programs/DGR/AffAction/index.html).

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ACE and Affirmative Action: A Brief History

If the goal of affirmative action was to bring underrepresented individuals up to their proportionate share of the population in the area of admission to selective institutions and programs, or to increase their share of the available pool of potential workers in a particular area of employment, then it would be easy to conclude that affirmative action has failed. On the other hand, if one goal was improved participation, then it is clear that substantial gains have been made.

For many years, ACE has sought to be a force for promoting diversity in higher education through conferences, programs, and guidance materials that target the needs and concerns of minority men and all women. ACE first addressed access issues for minorities following the passage of the Civil Rights Act of 1964, and when Title IX was passed in 1972, ACE's Annual Meeting focused on women in higher education. Listed below are a few of the more salient expressions of our commitment to promoting access, diversity, and equal opportunity in higher education:

- In the early 1970s, ACE issued self-assessment guidance materials to help institutions of higher learning better serve minority men and all women.

- For over 30 years, the ACE Fellows Program has promoted the advancement of all women and minority men in academic administration, and it boasts an excellent track record.

- Our National Network for Women Leaders, dedicated to the advancement of women in higher education, has been a major factor in tripling the number of women presidents at U.S. colleges and universities (now up to 16 percent of the total) over the past 20 years.

- Since 1982, ACE has issued sixteen annual minority status reports, which have brought national attention to the facts about minority participation in higher education. These reports are but one of the results of ACE's establishment in 1981 of its Office of Minorities in Higher Education (OMHE).

- ACE administers the GED Test annually to more than 850,000 Americans, providing an opportunity to obtain a high school equivalency diploma to persons who, for any number of reasons, did not complete high school.

- As part of ACE's series of self-regulation guidelines, the ACE Board in 1984 adopted a *"Statement on Educational Diversity, Equality, and Quality."* This document urged institutions to make a commitment to the principles and practices of civil rights, foster an environment encouraging diversity at all levels, and be sensitive to

the requirements of individual circumstances.

- Since 1977, ACE has administered the HEATH Resource Center, the national clearinghouse on postsecondary education for individuals with disabilities.

One of ACE's most celebrated accomplishments in the last decade was the issuance of the 1988 report, *One-Third of a Nation*, which drew attention to the lagging participation of minorities in higher education and set a goal of proportional representation by the end of the century. The report was prepared by a national commission of distinguished Americans, sponsored by ACE and the Education Commission of the States. The report urged institutions and governments at all levels to take the steps necessary to achieve this goal. The ACE Board subsequently declared the improvement of minority participation in higher education to be our organization's highest priority.

Today, the higher education community looks to ACE to lead the defense of affirmative action. Many people have appreciated ACE's efforts to protect student financial aid; the organization has made an equal commitment to defending the affirmative action programs that are under siege at the campus, state, and federal levels.

Through its Minority Status Reports, ACE has been calling attention both to the increase in minority participation in higher education and to the massive work that still needs to be done. Whether the gains already realized would have occurred in the absence of affirmative action pressures remains unknown, either as a matter of statistics or as a matter of policy, but ACE's advocacy in this arena is certain.

A particular concern of ACE is that women and minorities often are lumped together for affirmative action purposes. Among the limitations of this approach is that it "hides" and thereby disserves minority women. Also, the supply problems often differ greatly, particularly in higher education employment, where there exists an ample supply of white women but not women of color for most academic positions. ACE has been particularly vocal in calling attention to the enormity of the pipeline problem for underrepresented minorities.

The moral principle of affirmative action—far more than any governmental enforcement of legal requirements—has contributed substantially to the participation of all women and minority men in higher education. To impose new prohibitions against affirmative action in admissions decisions would be devastating to the effort to achieve and maintain diversity within our student bodies and, ironically, would be a serious intrusion into institutional autonomy at a time when many in

government and academe are demanding precisely the opposite.

A Call to Action

ACE's history of leadership in this field, including the strong commitment of its Board over many years to making the improvement of minority participation a top priority, has caused educators with similar interests and commitments to look to ACE for support now that affirmative action is under siege. ACE has responded by beginning an initiative to define affirmative action in positive terms, and to explain and defend its practice. Further, ACE has opposed federal and state attempts to dilute or terminate programs designed to promote affirmative action in employment, admissions, and financial aid. This publication, ***Making the Case for Affirmative Action in Higher Education***, is part of this initiative, and we hope you will be, too. Review this material, consider the strategy, and decide that now is the time to act. It is our collective responsibility to make the case for affirmative action in higher education.

The Need to Act is Reinforced: An ACE Survey

In 1995, administrators, student affairs officials, faculty, and students fron 22 public and private, two-year and four-year institutions participated in a telephone survey on campus climate and inter-group relations. The survey was conducted by six members of the Society for Values in Higher Education on behalf of ACE. The results confirmed that demographic trends, which show racial and ethnic minority groups growing more than seven times faster than the non-Hispanic white majority, already are being felt in a number of institutions around the country. Many respondents reported the special difficulties of struggling to manage diversity successfully, to maintain a gender-supportive campus environment, and to meet the challenge of preparing all students for citizenship in a greatly changing world.

This survey made clear that many of America's campus climate problems are subtle, tenacious, and hurtful. ACE understood the message as a call to strengthen the organization's voice in the national media and at all level of government to counteract attempts to undermine diversity in higher education. **It's a message ACE has heard and to which ACE's leadership will continue to respond.**

STATEMENT REAFFIRMING SUPPORT FOR AFFIRMATIVE ACTION AND DIVERSITY ADOPTED BY THE BOARD OF DIRECTORS OF THE AMERICAN COUNCIL ON EDUCATION MAY 29, 1997

ACE Board Statement:

The American Council on Education has a long history of support for expanded access to higher education and efforts by colleges and universities to ensure diversity in their student populations and their faculty and staff. That support was affirmed in the "Statement on Affirmative Action and Diversity" approved by the Board of Directors on May 25, 1995.

Numerous higher education associations have expressed support for diversity and the use of affirmative action in admissions and employment. Several have undertaken activities designed to educate the public and policy makers about the tools used by colleges and universities to expand access and ensure equity and inclusiveness. The American Association of Community Colleges, the American Association of State Colleges and Universities, and the Association of American Universities recently issued strong and useful statements on this issue.

The Board of Directors of the American Council on Education recognizes and endorses the statements and positions adopted by these associations. The Board reaffirms its support for the use of affirmative action in employment and admissions as part of the effort to achieve diversity and quality in American higher education.

STATEMENT ON AFFIRMATIVE ACTION AND DIVERSITY ADOPTED BY THE BOARD OF DIRECTORS OF THE AMERICAN COUNCIL ON EDUCATION MAY 25, 1995

ACE Board Statement:

The American Council on Education has a longstanding record of commitment to access to higher education for all qualified Americans and to the advancement of groups that in the past have been denied equal educational opportunity. This commitment is reflected in ACE's positions on public policy, its programmatic activities, and its employment practices. It has been expressed repeatedly in resolutions by the Board of Directors regarding affirmative action, nondiscrimination, equity, equal opportunity, and admissions standards.

In light of recent questions about the impact of affirmative action on college and university admissions and employment, and the prospects for its continuation, the Board of Directors wishes to reaffirm its previous resolutions and restate its support for efforts by higher education institutions to achieve diversity in their student populations and their faculty and staff. This support is based upon the following beliefs:

- **Diversity serves an important educational function.** One of higher education's essential functions is to broaden the perspectives of students by exposing them to individuals from different backgrounds and to a variety of disciplines, cultures, and points of view. Given the enormous changes taking place in our nation and the world, no person in the 21st century will be considered to have received a high quality education without such exposure.

- **Diversity in higher education helps prepare students for the world of work and for participation in a democratic society.** Employers in all sectors of the economy increasingly see diversity as critical to organizational success and competitiveness, and expect higher education to prepare students for a work environment that is characterized by diversity. They recognize that a diverse work force is a better, more productive work force—which is as true in higher education as it is in other sectors. In addition, as the economy increasingly demands higher levels of education for employment and advancement, the nation cannot hope to achieve true equality of opportunity unless it attains diversity among college students.

- **Affirmative action helps guarantee equal employment opportunity in colleges and universities and enhances quality in higher education.** As it has with other major employers, affirmative action has proved to be a useful tool to colleges and universities in ensuring compliance with fair employment practices and redressing

past discrimination. A diverse faculty and staff is essential for colleges and universities to provide high quality in teaching, scholarship, and service to the campus and the community.

- **Colleges and universities should enjoy significant latitude in fulfilling their missions.** One of the fundamental strengths of American higher education is the extraordinary diversity of its colleges and universities. Institutions differ greatly in their missions and serve a wide variety of constituencies. They employ a variety of quantitative and qualitative factors in the admissions process. Most colleges and universities have undertaken efforts to diversify their student bodies voluntarily, rather than as a result of legal requirements. For them to achieve their educational goals and serve society, it is important that colleges and universities retain the greatest degree of autonomy and freedom to develop their own admissions, academic, and employment standards.

The nation's colleges and universities have made important strides in recent years toward ending discrimination and enhancing the participation and success of historically disadvantaged minorities and women of all races. This task, however, is far from complete. Various forms of affirmative action, from outreach and admissions policies, to employment incentives, to specific training programs, have played an important role in the relative success that has been achieved to date, and should not now be abandoned. Therefore, the Board of Directors of the American Council on Education strongly endorses the continued use of affirmative action in employment and admissions as part of the effort to achieve diversity and high quality in American higher education.

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American Council on Education

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- **Division of Government and Public Affairs**
- **Office of Minorities in Higher Education**
- **Office of Women in Higher Education**

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